

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL, MUMBAI
REGIONAL BENCH
COURT No. 5**

Service Tax Appeal No. 87648 of 2016

(Arising out of Order-in-Original No. 07/ST/NGP-II/2016/C dated 09.09.2016 passed by the Commissioner of Customs, Central Excise & Service Tax, Nagpur-II)

Shreyas Infotech

227, Near Shivaji Skating Ground,
Gandhi Nagar, Shankar Nagar,
Nagpur 440 101.

Appellant

Vs.

Commissioner of CGST, Nagpur

Kendriya Utpad Shulk Bhavan,
Telengkhedi Road, PO Box No.81,
Civil Lines, Nagpur 440 001.

Respondent

Appearance:

Shri Mayur Shroff, Advocate, for the Appellant

Shri S.B.P. Sinha, Superintendent, Authorised Representative for Respondent

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

Date of Hearing: 25.06.2024

Date of Decision: 25.07.2024

FINAL ORDER NO. 85720/2024

PER: ANIL G. SHAKKARWAR

Brief facts of the case are that the appellant is engaged in selling of software products developed by Microsoft, which come in the form of E-licences. Appellant has registered with Service Tax for their business premises at 227, Near Shivaji Skating Ground, Gandhi Nagar, Nagpur. Appellant has been availing the facility of cenvat credit. During the scrutiny of records of the appellant for the period from 2010-11 to 2013-14, it was observed that the invoices of input services were having addresses of the recipient of service as 227, Near Shivaji Skating Ground, Gandhi Nagar, Nagpur as well as 286, Mata Mandir Road, Dharampeth, Nagpur and Seme Compound, Mahoba Bazar, Behind Picaddy Hotel, Raipur. It appeared to Revenue that the input services where the address is other than that for

which registration was obtained were not admissible for availment for cenvat credit in terms of proviso to sub-rule (2) of Rule 9 of Cenvat Credit Rules, 2004. Therefore, a show cause notice dated 21/23.10.2015 was issued to the appellant with a proposal to disallow cenvat credit of Rs.1,19,19,010/- under proviso to sub-section (1) of Section 73 of Finance Act, 1994 read with Rule 14 of Cenvat Credit Rules, 2004. There were other proposals for imposition of penalty and recovery of interest. Appellant contested the said show cause notice and submitted that they were registered for Service Tax at their address at 227, Near Shivaji Skating Ground, Gandhi Nagar, Shankar Nagar, Nagpur and when the business increased, they shifted and started running their business from two places having address as 286, Mata Mandir Road, Dharampeth, Nagpur and Seme Compound, Mahoba Bazar, Behind Picaddy Hotel, Raipur and they failed to take centralized Service Tax registration to include those two addresses in Service Tax registration. They contended before the original authority that there were plethora of judgments which held that cenvat credit cannot be denied merely due to technical lapses like non-registration of premises or mentioning of wrong addresses on cenvat documents if there is no dispute with respect to use of input services in relation to providing output services. The above stated show cause notice was adjudicated through impugned order-in-original wherein learned original authority has held that the invoices which were received having addresses other than the address of registered premises are the one which could amount to not having received such services by the appellant and, therefore, he disallowed cenvat credit of Rs.1,19,19,010/- and imposed equal penalty and ordered the appellant to pay interest. Aggrieved by the said order, appellant is before this Tribunal.

2. Heard the learned counsel for the appellant. Learned counsel for the appellant has submitted that it is well settled law that registration of premises is not mandated as a condition precedent for availment of cenvat credit and there is no provision in Cenvat Credit Rules which imposes such a restriction and that it has been held in a number of decisions that cenvat

credit cannot be denied on the basis of allegation that the output service provider had issued invoices mentioning the addresses of unregistered offices of the service receiver. He has relied on the following case laws such as mPortal India Wireless Solutions P. Ltd. vs. CST, Bangalore reported at 2012 (27) STR 134 (Kar.) and CST, Noida vs. Atrenta India Pvt. Ltd. reported at 2017 (48) STR 361 (All.). He has further submitted that there is no allegation in the show cause notice that the appellant has not received the said input services nor there is any allegation in the show cause notice stating that the input services had not suffered the service tax stated to have been paid through those invoices. He has submitted that in fact at para 5 of the said show cause notice, it is stated that the invoices contained the addresses which are genuine addresses belonging to the appellant. He has contended that the show cause notice has clearly stated that all the addresses which are recorded on the input invoices are genuine addresses of the appellant and that the finding of the original authority that the services for which invoices are issued at addresses other than the registered address of the appellant are not received by the appellant is contrary to the contention stated in the show cause notice.

3. Heard the learned AR who has supported the impugned order-in-original.

4. We have carefully gone through the record of the case and submissions made. We note that para 5 of the said show cause notice clearly states that all the above stated three addresses are genuine addresses belonging to the appellant. We note that the finding of the original authority that the services in respect of which invoices have been issued to the other two addresses of the appellant other than the address for which service tax registration has been taken are the services not received by the appellant is contrary to the contention stated by Revenue in the show cause notice. Therefore the same is not sustainable in law. Further, we have gone through the ruling of Hon'ble Karnataka High Court in the case of mPortal India Wireless Solutions P. Ltd. (supra). We understand from the ruling by Hon'ble Karnataka High Court in the said case that registration of a premises is not

a condition precedent for availing cenvat credit. We also note that there is no allegation in the show cause notice that the services associated with the invoices in question were not received by the appellant nor there were any allegations that the input services did not suffer service tax. We, therefore, hold that the appellant was eligible for availment of cenvat credit of Rs.1,19,19,010/- and, therefore, we set aside the impugned order and allow the appeal.

(Order pronounced in the open court on 25.07.2024)

(Anil G. Shakkarwar)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

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