IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT NO. I

Service Tax Appeal No. 40175 of 2017

WITH

Service Tax Appeal No. 40176 of 2017

AND

Service Tax Appeal No. 40177 of 2017

WITH

Service Tax Misc.[CT] Application Nos. 40128 to 40130 of 2023
(on behalf of Respondent)

(Arising out of common Orders-in-Appeal Nos. 534, 535 & 536/2016 (STA-I) dated 01.09.2016 passed by the Commissioner of Service Tax (Appeals-I), Newry Towers, 2054/1, II Avenue, 12th Main Road, Anna Nagar, Chennai – 600 040)

The Commissioner of Service Tax : Appellant
Service Tax-II Commissionerate,
Newry Towers, Plot No. 2054, I Block,
12th Main Road, II Avenue,
Anna Nagar, Chennai – 600 040

VERSUS

M/s. Ad2Pro Global Creative Solutions Pvt. Ltd. : Respondent
[Formerly "M/s. Ad2pro Media Solutions Pvt. Ltd."]
8/17, 3rd Floor, B Block, Sunny Side,
Shafee Mohammed Road, Nungambakkam,
Chennai – 600 034

APPEARANCE:

Smt. Sridevi Taritla, Additional Commissioner for the Appellant

Ms. Shrayashree T., Advocate for the Respondent

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER NOs. 40351-40353 /2023

DATE OF HEARING: 25.04.2023

DATE OF DECISION: 26.05.2023

Order : [Per Hon'ble Mr. Vasa Seshagiri Rao]

Briefly stated, the facts are that the Commissioner of Service Tax, Service Tax-II Commissionerate, Newry Towers, Anna Nagar, Chennai – 600 040 filed these three appeals against the Order-in-Appeal Nos. 534, 535 & 536/2016 (STA-I) dated 01.09.2016 passed by the Commissioner of Service Tax (Appeals-I), Chennai (impugned herein) allowing the appeals filed by M/s. Ad2pro Media Solutions Private Limited against the Orders-in-Original Nos. 01/2015(R) dated 09.04.2015, 15/2015(R) dated 13.08.2015 and 57/2015(R) dated 06.11.2015 passed by the Assistant Commissioner of Service Tax, Service Tax-I, Division III, Chennai, who had partly allowed the refund claims, but rejected certain portion on account of certain invoices not being submitted within the limitation period of one year in terms of Section 11B of the Central Excise Act, 1944 and also availment of CENVAT Credit on account of non-registration of premises as well as availing CENVAT Credit on certain invoices even before payment of Service Tax.

2. It is to be noted that there is a change in the respondent's name from "Ad2pro Media Solutions Private Limited" to "Ad2pro Global Creative Solutions Private Limited". Miscellaneous petitions have been filed by the respondent to this effect requesting for change in the cause-title. The above request was acceded to and the petitions for amending the cause-title are allowed, as prayed for.

3.1 The details of the appeals are summarized below: -

S. No.	Appeal No.	OIA No./ date	OIO No./ date	Period Involved	Date of refund claim	Refund claimed (in Rs.)	Refund sanctioned (in Rs.)	Refund amt rejected (in Rs.)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1.	ST/40175/17	534, 535 & 536/2016 (STA-I) dt. 01.09.2016	01/2015(R) dt. 09.04.2015	Oct '12 To Dec '12	27.09.2013	40,13,633/-	14,45,585/-	25,68,048/-
2.	ST/40176/17		15/2015(R) dt. 13.08.2015	Jan '13 To Mar '13	26.12.2013	27,80,586/-	11,53,173/-	16,27,413/-
3.	ST/40177/17		57/2015(R) dt. 06.11.2015	Apr '13 To Jun '13	27.03.2014	41,49,517/-	13,92,864/-	27,56,653/-

3.2 As the issues involved in all these three appeals are common, these are being disposed of by this common order.

3.3 M/s. Ad2Pro Global Creative Solutions Pvt. Ltd. [Formerly known as "M/s. Ad2pro Media Solutions Pvt. Ltd.], the respondent herein, are providing the taxable service of 'Advertising' to their clients abroad and have filed these refund claims under Rule 5 of the CENVAT Credit Rules, 2004 read with Notification No. 27/2012-C.E.(N.T.) dated 18.06.2012, being the unutilized CENVAT Credit pertaining to the period as mentioned in Column (5) of the table above, for the amounts mentioned in Column (7) of the table. The Assistant Commissioner of Service Tax, Service Tax-I, Division-III, Chennai passed the Orders-in-Original as indicated at Column (4) of the table, who sanctioned a part of the refund claims while partially rejecting the amounts mentioned in Column (9) of the table.

3.4 While determining the export turnover and total turnover, payments received in respect of certain invoices for which the refund claims were filed, were held to be ineligible since documents had not been filed within the time-frame stipulated under Section 11B of the Central Excise Act, 1944.The value of export invoices within the stipulated time-frame, that is to say, those invoices whose export dates were within one year preceding the date of filing of the refund claim were only considered for computation of the export turnover, resulting in partial rejection of the refund claims filed. The refund sanctioning authority has disallowed credit to an extent of Rs.14,50,865/- of input tax credit on account of: (a) non-registration of premises, (b) Service Tax payment being made beyond the three-month period in terms of Rule 4(7) of the CENVAT Credit Rules, 2004 and (c) CENVAT Credit taken before the date of payment of Service Tax.

4.1 We have noted that in the impugned order, it was held that the date of receipt of payment in convertible foreign exchange where provision of service has been completed should be the 'relevant date' in terms of Section 11B of the Central Excise Act, 1944, thereby allowing the appeals filed by the respondent-assessee.

4.2 The respondent has contended that in respect of late payment of tax on import of service under reverse charge mechanism on the Challan No. 10183 dated 04.07.2013 for Rs.14,25,948/- and with regard to the invoices pertaining to M/s. Dun & Bradstreet Information Services India Pvt. Ltd., the receipt and utilization of the said services, in or in relation to their output service or the Service Tax paid or the nature of the services was not at all in dispute. It was put forth that it is a settled law that substantial benefit cannot be denied for procedural lapses; the only aspect that was to be ensured is that the refund should not be claimed more than once on the same invoice. Reliance was placed on the following case-law in support of the above contentions: -

(i) Collector of Central Excise, Madras v. Redema [1998 (97) E.L.T. 454 (Tribunal)]
(ii) Manubhai & Co. v. C.S.T., Ahmedabad [2011 (21) S.T.R. 65 (Tri. – Ahmd.)]
(iii) Cotfab Exports [2006 (205) E.L.T. 1027 (GOI)]

4.3 On the issue of denial of a portion of the refund on the ground of unregistered premises, it was submitted that as long as they can establish that they have borne the incidence of duty on the input services and have utilized the same in providing taxable output services, they are eligible for tax credit on the input services, by relying upon the decisions rendered in the following cases: -

(i) mPortal India Wireless Solutions Pvt. Ltd. v. C.S.T., Bangalore [2012 (27) S.T.R. 134 (Kar.)]
(ii) Commr. of S.T., Chennai v. Verizon Data Services India P. Ltd. [2015 (39) S.T.R. 522 (Tri. – Chennai)]

5. We find that the Revenue came in appeal before this forum only on the following two issues: -

- Availment of credit which is not due during the quarter; and
- Non-registration of premises

6. The decision of the Commissioner (Appeals) on the point as to relevant date for export of service for computation of limitation under Section 11B of the Central Excise Act, 1944 as the date of receipt of payment in convertible foreign exchange, has been admitted by the Department.

7. The contentions of the Department are briefly put as follows: -

(i) As per Rule 5(1)(B) of the CENVAT Credit Rules, 2004, "Net CENVAT Credit" means the total CENVAT Credit availed on inputs and input services by the manufacturer or the output service provider during the relevant period. In the instant case, an amount of Rs.18,169/- was paid on 04.07.2003 and as such, the assessee is not eligible to take the credit during the period from April 2013 to June 2013, which is the period pertaining to the refund claim. So, this was rightly disallowed by the refund sanctioning authority, but the Commissioner (Appeals) allowed the same in violation of the above said Rule.

(ii) On the issue of non-registration of premises, it is submitted that registration is an act by which every manufacturer / assessee / service provider comes under the ambit of the Central Excise Act / Finance Act in order to avail any substantial benefits like CENVAT Credit given under the statute; registration is undoubtedly a pre-requisite. Hence, the assessee has failed to take up registration as per Section 69 of the Finance Act, 1994 read with Rule 4(1) of the

Service Tax Rules, 1994, rendering them ineligible for CENVAT Credit on input services accumulated prior to their registration. It is also the contention of the Department that the issue involved in these appeals is not a mere technical lapse; in order to deserve any substantive benefit of any Act or Rule, the person claiming such substantive benefit has to strictly follow the conditions and procedures prescribed therein. Reliance in this regard has been placed on the decision of the Division Bench of the Hon'ble Madras High Court in the case of *Commissioner of Central Excise Coimbatore v. M/s. Sutham Nylocots [2014 (306) E.L.T. 255 (Mad.)]* wherein it was observed that credit is accrued only after the date of registration.

8.1 Ms. Shrayashree T., Learned Advocate representing the respondent, has submitted that eligibility for refund of CENVAT Credit under Rule 5 of the CENVAT Credit Rules, 2004 pertaining to the period prior to registration of premises is legally set at rest by a series of decisions of the Hon'ble jurisdictional High Court in the cases of: -

(i) Commissioner of Service Tax-III, Chennai v. CESTAT, Chennai & Scionspire Consulting Services (India) Pvt. Ltd. [2017 (3) G.S.T.L. 45 (Mad.)

(ii) Commissioner of G.S.T. & Central Excise, Chennai v. BNP Paribas Sundaram Global Securities Operations Pvt. Ltd. [2018 (6) TMI 676 – Madras High Court]

(iii) Commissioner of G.S.T. & Central Excise, Chennai v. Pay Pal India Pvt. Ltd. [2020 (7) TMI 321 – Madras High Court]

wherein it was clearly held that Rule 5 of the CENVAT Credit Rules does not mandate registration as a compulsory condition prior to availing CENVAT Credit and as such, refund of CENVAT Credit pertaining to the period prior to registration cannot be denied as held in the case of *M/s.*

Temenos India Pvt. Ltd. v. Commissioner of Service Tax, Chennai [2020 (2) TMI 354 – CESTAT, Chennai]

8.2.1 The Learned Advocate has admitted that they have availed CENVAT Credit to the extent of Rs.18,169/- prior to the date of payment of tax, i.e., the CENVAT Credit was availed for the period from April 2013 to June 2013 when the tax was paid on 04th July, 2013. Thus, premature availment of CENVAT Credit is accepted as a procedural lapse, but it is argued that it cannot take away the substantive right of the appellant to CENVAT Credit when there is no dispute as to the eligibility to avail CENVAT Credit on Service Tax payable and also when substantive conditions like payment of Service Tax, receipt of service, etc., have been found to be satisfied. In support of this argument, reliance is placed on the following decisions: -

(i) *Commissioner of Central Excise, Surat-II v. White En-All Pvt. Ltd. [2004 (175) E.L.T. 119 (Tri. – Mumbai)]*
(ii) *Ve Commercial Vehicles Ltd. v. CST, Indore [2018 (8) TMI 233 – CESTAT, New Delhi]*
(iii) *India Cement Ltd. v. Commissioner of Central Excise, Customs and Service Tax, Tirupati [2018 (5) TMI 603 – CESTAT, Hyderabad]*
(iv) *CCE, Jaipur v. Samcor Glass Ltd. [2016 (9) TMI 684 – CESTAT, New Delhi]*

8.2.2 It is also submitted that CENVAT Credit availed during the period from April 2013 to June 2013 on services for which payment was made in July 2013, should be treated as eligible CENVAT Credit and as part of the 'Net CENVAT Credit'.

9.0 Learned Authorized Representative Smt. Sridevi Taritla (Addl. Commissioner), representing the Department, has reiterated the grounds-of-appeal. She has conceded regarding the 'relevant date' under Section 11B of the Central Excise Act, 1944 as not the date of export invoices, but the date of receipt of FIRCs.

9.1 She has contended that the assessee would not be entitled to avail the benefit of any scheme under the Act or Rule even before its registration and also before payment of tax thereon.

10. We have heard both sides and perused the records as available in these appeals.

11. We find that the Department came in appeal only on the following two issues: -

(1) Whether the respondent herein is eligible to avail the CENVAT Credit on inputs / input services without registration of its premises?

(2) Whether the respondent-assessee can avail CENVAT Credit on inputs or input services before payment of tax thereon and also before the date of invoice?

12.1 We find that the Hon'ble Madras High Court in the case of *Commissioner of Service Tax-III, Chennai v. CESTAT, Chennai & Scionspire Consulting Services (India) Pvt. Ltd. [2017 (3) G.S.T.L. 45 (Mad.)]* has held that in the absence of any statutory provision prescribing registration of premises as mandatory for availing input service tax credit, the assessee could not be denied refund of unutilized CENVAT Credit on input services

12.2 We also find that the Hon'ble Karnataka High Court in the case of *mPortal India Wireless Solutions Pvt. Ltd. v. C.S.T., Bangalore [2012 (27) S.T.R. 134 (Kar.)]* has observed as under: -

> *"6. The assessee is a 100% export oriented unit. The export of software at the relevant point of time was not a taxable service. However, the assessee had paid input tax on various services. According to the assessee a sum of Rs. 4,36,985/- is accumulated Cenvat credit. The Tribunal has categorically held that even though the export of software is not a taxable service but still the assessee cannot be denied the Cenvat credit. The assessee is entitled to the refund of Cenvat credit. Similarly insofar as refund of Cenvat credit is concerned, the limitation*

under Section 11B does not apply for refund a accumulated Cenvat credit. Therefore, bar of limitation cannot be a ground to refuse Cenvat credit to the assessee.

7. Insofar as requirement of registration with the department as a condition precedent for claiming Cenvat credit is concerned, learned counsel appearing for both parties were unable to point out any provision in the Cenvat Credit Rules which impose such restriction. In the absence of a statutory provision which prescribes that registration is mandatory and that if such a registration is not made the assessee is not entitled to the benefit of refund, the three authorities committed a serious error in rejecting the claim for refund on the ground which is not existence in law. Therefore, said finding recorded by the Tribunal as well as by the lower authorities cannot be sustained. Accordingly, it is set aside."

12.3 Further, the Regional Chennai Bench of the CESTAT in the case of *M/s. Temenos India Pvt. Ltd. v. Commissioner of Service Tax, Chennai [2020 (2) TMI 354 – CESTAT, Chennai]* has held as under: -

"8.1 With regard to the issue of denial of input credit for want of registration, we find that this issue is covered by the decision of the Chennai Bench of the Tribunal, in the appellant's own case although for a different period, in Service Tax Appeal No. 40675 of 2016 (vide Final Order No. 41063 of 2018 dated 09.04.2018) and this Bench, after following the decision of the Hon'ble High Court of Judicature at Madras in the case of Commissioner of Service Tax-III v. CESTAT, Chennai [2017 (3) G.S.T.L. 45 (Mad.)], has ruled in favour of the assessee.

8.2 In view of the above, we are of the view that the denial of refund for want of registration of the premises is bad. The impugned order to this extent cannot be sustained and consequently, the same is set aside."

12.4 So, we have to hold that denial of CENVAT Credit for non-registration of premises is not justified in the facts of these appeals.

13.1 Regarding premature availment of credit where substantive conditions to take CENVAT Credit are fulfilled, we find that the respondent had availed CENVAT Credit to the tune of Rs.18,169/- prior to the date of payment of tax, i.e., the CENVAT Credit was availed for the refund claimed from April 2013 to June 2013 when the Service Tax was paid on 04.07.2013. The respondent has admitted that it is a procedural lapse, but their substantive right cannot be taken away when there is no dispute as to the eligibility of CENVAT Credit of Service Tax paid and when conditions like payment of tax and receipt of service have been found to be satisfied.

13.2 In this connection, reference is made to Rule 4(7) of the CENVAT Credit Rules, 2004, which reads as given below: -

> *"Rule 4. Conditions for allowing CENVAT credit –*
>
> *…*
>
> *(7) The CENVAT credit in respect of input service shall be allowed, on or after the day on which payment is made of the value of input service and the service tax paid or payable as is indicated in invoice, bill, or, as the case may be, challan referred to in rule 9."*

13.3 We find that reliance is placed by the Learned Advocate for the respondent on the decision rendered in the case of *Commissioner of Central Excise, Surat-II v. White En-All Pvt. Ltd. [2004 (175) E.L.T. 119 (Tri. – Mumbai)]* wherein it was held as under: -

> *"4. Considered the rival submissions. It is not in dispute that, the goods are duty paid, they have used in the manufacture of finished goods, and the only lapse on the part of the respondents is that instead of taking credit on 8-4-1994 the credit was taken on 6-4-1994. It is nobody's case that, had the credit been taken on 8-4-1994, the*

> *same could be held as inadmissible. It is also not brought on record that this credit was utilised before 8-4-1994. Therefore on considering the facts and circumstances of this case, I hold that the credit could not be denied and for this lapse there is no case for imposing penalty."*

and the case of *India Cement Ltd. v. Commissioner of Central Excise, Customs and Service Tax, Tirupati [2018 (5) TMI 603 – CESTAT, Hyderabad]* where CENVAT Credit was denied on the ground that the appellant therein had availed the credit before the payment of Service Tax and it was held that in the absence of any dispute that the appellant has discharged the tax liability as per the provisions of the Service Tax Rules and there being no dispute as to the eligibility to avail CENVAT Credit, availing CENVAT Credit before few days in advance is only a procedural lapse; credit cannot be denied on this basis.

14. In respect of refund claims filed under Rule 5 of the CENVAT Credit Rules, 2004 read with Notification No. 27/2012-C.E.(N.T.) dated 18.06.2012, it can also be said that the assessee is not immediately utilising the credit for payment of duty on clearance of goods or for providing services. For the purpose of computation of Net CENVAT Credit only these credit amounts are considered and actual sanction of refund claims will definitely take some processing time and the assessee would have been found eligible to utilize these credits by that time even otherwise.

15. We have also gone through the other case-law relied upon by the respondent wherein similar views have been taken.

16. In view of the discussions and findings as above, we are of the opinion that the order passed by the Commissioner (Appeals) does not call for any interference.

17. Accordingly, the three appeals viz. Service Tax Appeal Nos. 40175, 40176 and 40177 of 2017 filed by the Department are dismissed as not maintainable.

(Order pronounced in the open court on **26.05.2023**)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)

Sdd