

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**  
**NEW DELHI**

**PRINCIPAL BENCH – COURT NO. 1**

**Service Tax Appeal No. 50270 of 2017**

(Arising out of Order-in-Appeal No. 117/ST/DLH/2016-17 dated 31.10.2016 passed by the Commissioner of Service Tax (Appeals), Delhi-I)

**M/s Reliance HR Services Private Limited**

**Appellant**

1<sup>st</sup> Floor, C Wing,  
Reliance Centre,  
Maharaja Ranjit Singh Marg,  
New Delhi – 110 002.

VERSUS

**Assistant Commissioner of Service Tax,  
New Delhi**

**Respondent**

Delhi-I Commissionerate,  
IAEA House, M.G. Road,  
IP Estate, New Delhi-110 002.

**Appearance**

Shri Gopal Mundhara, Advocate – for the Appellant.

Dr. Radhe Tallo, Authorized Representative – for the Respondent.

**CORAM:**

**HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT**

**HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)**

**Date of Hearing : 15/05/2023**

**Date of Decision : 22/05/2023**

**Final Order No. 50687/2023**

**P. Anjani Kumar**

The appellants are registered with service tax department and are engaged in the provision of 'manpower recruitment agency'

and 'commercial training or coaching' services. During the course of audit conducted, it was noticed that the appellants have wrongly availed Cenvat credit on input services and invoices issued in the name of locations which are not included in the Centralized registration. A show cause notice dated 28.04.2012 was issued to the appellants and was confirmed by the Additional Commissioner vide order dated 30.03.2016. On an appeal filed by the appellants, the Commissioner (Appeals) vide impugned order upheld the order of the original authority. Hence this appeal.

2. Shri Gopal Mundhara, learned counsel for the appellant submitted that the issue regarding eligibility of Cenvat credit in respect of services received prior to registration is no longer res integra and Rule 4A of the Service Tax Rules, 1994 does not impose any obligation that the service recipient require to be registered. He relies upon **Rajender Kumar & Associates Vs. Commissioner of Service Tax, Delhi-II**<sup>1</sup>, wherein it is held that once the requirements of Rule 4A of the Service Tax Rules and Rule 9 of Cenvat Credit Rules, 2004 are satisfied, the benefit of Cenvat credit on account of unregistered premises cannot be denied. Learned counsel relies upon the following cases:

- (i) **Jai Balaji Industries Limited (Unit IV) Vs. Commissioner of Central Excise**<sup>2</sup> ;
- (ii) **Tata Business Support Services Ltd. Vs. Commissioner of Service Tax-VII, Mumbai**;<sup>3</sup>
- (iii) **M/s All Cargo Global Logistics Vs. Commissioner of Central Excise, Indore**<sup>4</sup>;

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1 2021 (45) GSTL 184 (Tri.-Del.)

2 2022 (58) GSTL 361 (Tri.-Kolkata)

3 2021 (44) GSTL 169 (Tri.-Mumbai)

4 2016 (12) TMI 1065 – CESTAT NEW DELHI

- (iv) **mPortal India Wireless Solutions Pvt. Ltd. Vs. CST, Bangalore<sup>5</sup>;**
- (v) **Dorling Kindersley India Pvt. Ltd. Vs. Commissioner of Central Excise and Service Tax, Noida<sup>6</sup>;**
- (vi) **J R Herbal Care Vs. Commissioner of Central Excise<sup>7</sup>;**
- (vii) **Well Known Polyesters Ltd. Vs. Commissioner of Central Excise, Vapi<sup>8</sup>;**
- (viii) **C. Metric Solution Pvt. Ltd. Vs. Commissioner of Central Excise, Ahmedabad<sup>9</sup>**

3. Learned counsel for the appellant submits that it is a well settled law that on account of procedural irregularities/lapses substantive benefit cannot be denied; the appellant availed Cenvat credit of service tax paid on the inputs/input services prior to registration at some locations with the service tax department; eligibility of credit usage of such services for providing taxable output services are not under dispute; and therefore, non-registration of the branches is only a procedural lapse. He relies on **Commissioner of Central Excise Vs. Dashion Ltd.**<sup>10</sup> Learned counsel for the appellant also submits that a show cause notice can be issued invoking the extended period but extended period can be invoked where there is evasion of tax or intent to evade payment of tax, by way of commission, omission or failure to disclose wholly or truly material facts required for verification of assessment. In the instant case, the appellants have filed returns with the department from time to time and have provided material

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5      2012 (27) STR 134 (Kar.)  
6      2015-TIOL-1267-CESTAT-DEL  
7      2010 (253) ELT 321 (CESTAT SMB)  
8      2011 (267) ELT 221 (Tri.-Ahmd.)  
9      2012 (286) ELT 58 (Tri.-Ahmd.)  
10     2016 (41) STR 884 (Guj.)

facts; department is very well aware of the availment of credit by the appellant; as the show cause notice has been issued pursuant to audit conducted by the department there cannot be an allegation of suppression as held in **Graphite India Limited Vs. CCE & ST, Nasik**<sup>11</sup>. Learned counsel also submits that as the demand is not sustainable, question of penalty and interest does not arise as held in **Pratibha Processors Vs. Union of India**<sup>12</sup>.

4. Learned authorized representative for the department reiterates the findings in the impugned order.

5. Heard both sides and perused the records of the case.

6. We find that availability of credit to the appellant is guided by Rule 9(2) of Cenvat Credit Rules and Rule 4A of the Service Tax Rules, 1994. For ease of reference the same are reproduced as under:

"4A.(1) Every person providing taxable service, not later than thirty days from the date of completion of such taxable service or receipt of any payment towards the value of such taxable service, whichever is earlier, shall issue an invoice, a bill or as the case may be, a challan signed by such person or a person authorized by him in respect of such taxable service provided or agreed to be provided and such invoice, bill or, as the case may be, challan shall be serially numbered and shall contain the following, namely :-

(i) the name, address and the registration number of such person;

(ii) the name and address of the person receiving taxable service;

(iii) description, classification and value of taxable service provided or to be provided and

(iv) the service tax payable thereon :"

**Provided** that in case the provider of taxable service is a banking company or a financial institution including a non-banking financial company providing service to any

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11 2019-TIOL-1028-CESTAT-MUM

12 1996 (88) ELT 12 (SC)

person, an invoice, a bill or, as the case may be, challan shall include any document, by whatever name called, whether or not serially numbered, and whether or not containing address of the person receiving taxable service but containing other information in such documents as required under this sub-rule.

**Provided** further that in case the provider of taxable service is a goods transport agency, providing service to any person, in relation to transport of goods by road in a goods."

**"RULE 9.** Documents and accounts. — (1) The CENVAT credit shall be taken by the manufacturer or the provider of output service or input service distributor, as the case may be, on the basis of any of the following documents, namely :-

(a) an invoice issued by –

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(i) a manufacturer or a service provider for clearance of -

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(g) an invoice, bill or challan issued by an input service distributor under Rule 4A of the Service Tax Rules, 1994 :

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**Provided** that if the said document does not contain all the particulars but contains the details of duty or service tax payable, description of the goods or taxable service, [assessable value, Central Excise or Service tax registration number of the person issuing the invoice, as the case may be,] name and address of the factory or warehouse or premises of first or second stage dealers or [provider of output service], and the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, is satisfied that the goods or services covered by the said document have been received and accounted for in the books of the account of the receiver, he may allow the CENVAT credit.]

(3) \* \* \* \*

7. We find that in terms of Rule 4A(1) of Service Tax Rules, 1994 the invoice or the challan shall be serially numbered and shall contain the name, address and registration number of such person

(i.e. provider of the services); name and address of the person receiving taxable service; description and value of taxable service provided or agreed to be provided and the service tax payable thereon. We find that as submitted by the appellants, there is no requirement to indicate in the invoice, the registration number of the receiver, who avails Cenvat credit, i.e. in the instant case of the appellants. We also find that proviso to Rule 9(1) of Cenvat Credit Rules provides that even if the duty paying documents (i.e. the invoice, bill or challan issued by the person who is providing taxable service to taxable output service provider such as the appellant) does not contain all particulars but contain the details of duty or service tax paid or payable, description of the goods or taxable service, assessable value, (central excise or service tax registration number of the person issuing the invoice, as the case may be), name and address of the factory or warehouse or premises of first or second stage dealers or provider of output service, credit may be allowed. To this extent, we find that there is force in the argument of the appellants. The appellants rely upon the case of **Rajender Kumar & Associates** (supra). The Bench has observed as follows:

**"19.** Once the requirement of Rule 4A of the 1994 Rules and Rule 9 of the 2004 Rules are satisfied, the benefit of Cenvat credit could not have been demanded. Thus, the Commissioner was not justified in denying the benefit of Cenvat credit on the unregistered premises.

**20.** The Commissioner has further held that the benefit of Cenvat credit for services received by the Appellant on the strength of invoices addressed to another unit is not admissible as the Appellant failed to take Central Registration or ISD Registration to avail and distribute the Cenvat credit.

**21.** This finding of the Commissioner is also not correct. There is no law that prescribes that the only way to distribute Cenvat credit is registering as an ISD."

8. The Tribunal Mumbai in the case of **Tata Business Support Services Ltd. Vs. Commr. of S.T-VII, Mumbai**<sup>13</sup> observed that:

**"9.** There could be no clearer exposition of the legal provision that militates against the ground on which proceedings were initiated against the appellant herein. It was open to the jurisdictional officials to establish that the impugned services were not 'input service' within the meaning of the Rule 2 of Cenvat Credit Rules, 2004. It is not for the provider of 'output service' to satisfy the jurisdictional official but for the jurisdictional official, on the basis of ascertainment, to satisfy itself on the deployment of such service and to initiate proceedings in the absence of such satisfaction. Neither does the show cause notice adduce any evidence of that and nor did the jurisdictional official do so under the latitude afforded by the direction in the remand order of the Tribunal. The sweeping assertion of non-existence merely owing to non-registration is not dissimilar to the symbolic discountenancing by Pontius Pilate that relegated him to a mere footnote in history. In the absence of express articulation of lack of satisfaction, Rule 9 of Cenvat Credit Rules, 2004 does not come to the assistance of Revenue.

**10.** It is, indeed, surprising that the adjudicating authority appeared to have blindsided itself to the ostensible obligation of the appellant to register its new premises before entitling themselves to privileges. The consequent overlooking of substantive compliance by discharging tax liability on 'output service', remaining unchallenged in the proceedings and, indeed, found to be acceptable is demonstrative of the rigid 'technical construing' that is in breach of public interest by contributing to cascading effects of taxation. The acknowledgement of due discharge of tax liability on 'output service' for which the impugned services were procured and, in the absence of evidence to the contrary, deployed suffices to entitle the appellant under the scheme of Cenvat credit."

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13      2021 (44) GSTL 169 (Tri.-Mumbai)

9. In view of the above, we find that the impugned order is not sustainable and is liable to be set aside and accordingly, we do so.

(Pronounced in open Court on 22.05.2023)

**(Justice Dilip Gupta)**  
**President**

**(P. Anjani Kumar)**  
**Member (Technical)**

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