IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 3.1.2020

CORAM

THE HONOURABLE DR.JUSTICE VINEET KOTHARI
AND
THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

C.M.A.No.4755 of 2019
and
C.M.P.No.27249 of 2019

Commissioner of GST & Central Excise,
Chennai South Commissionerate,
MHU Complex, No.692, Anna Salai,
Nandanam, Chennai 600 035. Appellant

Versus

M/s.Zylog Systems Limited,
No.155, Tiruvalluvar Salai,
Kumaran Nagar, Sholinganallur,
Chennai 600 119. Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 35 of Central Excise Act read with Section 83 of Finance Act, 1944 against the Final Order No.40369 of 2019 dated 15.2.2019 in Appeal No.ST/638/2011-DB passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai.

For Appellant : Mr.T.L.Thirumalaisamy

JUDGMENT

(Judgment of the court was made by Dr.VINEET KOTHARI, J.)

The Revenue has filed this Appeal against order passed by the learned CESTAT on 15.2.2019 whereby the learned Tribunal has disposed of the Appeal filed by the Revenue in favour of the Respondent/Assessee holding that the controversy involved in the case on hand is covered by a judgment of jurisdictional High Court.

2. The relevant portion of the order passed by the learned Tribunal, which is impugned before us, is quoted below for ready reference:-

> " 2. Today, when the matter came up for hearing, on behalf of Revenue, Ld. A.R.Shri.S.Govindarajan reiterated the grounds of appeal. None present for the respondents.

> 3. We find that the issue in dispute is no longer res integra and has been laid down to rest by a number of decisions and in particular the judgment of the Hon'ble High Court in BNP Paribas Sundaram Global Securities Operations Private Limited 2018-TIOL-1126-HC-MAD-ST, wherein it has been held that registration of assessee's premises is not a pre-requisite for claiming credit of refund under Rule 5 of CCR 2004. The issue also stands squarely covered by following case laws:-
> i) GST, Chennai vs. CESTAT, Chennai
>
> 2017 (3) GSTL 45 (Mad.)
>
> ii) mPortal India Wireless Solutions Private Limited
>
> 2012 (27) STR 134 (Kar.)
> iii) GST, Chennai vs. Verizon Data Services India Pvt. Ltd.
>
> C.M.A.No.2667/2014 dated 22.6.2017.
>
> Even in a recent decision in BNP Paribas Sundaram Global Securities Operations Private Limited, the Hon'ble High Court of Madras, has inter alia held that Rule 5 of CCR, 2004, does not stipulate registration of premises as a necessary pre-requisite for claiming A refund. The Hon'ble High Court has reiterated their earlier decision in M/s.Scioinspire Consulting Services India Private Limited and another 2017-TIOL-798-HC-MAD-ST. Viewed in this light, no merit is found in the Appeal of the Department for which reason the Appeal is dismissed."

3. The learned counsel appearing for the Revenue submitted that though the issue was covered by the aforesaid Judgment of the High Court, the learned Tribunal has failed to decide the question of limitation for filing refund claim by the Assessee before the Authority concerned even tough a ground in this regard was raised in the Grounds of Appeal before the learned Tribunal. He further submitted that such a ground is reiterated as Ground 'H' in the present Memorandum of appeal which is also quoted below for ready reference:-

> "H. The issue of limitation for filing refund was raised in the appeal filed by the Department before Hon'ble CESTAT against Order-in-Appeal No.158/2011 9 (MST) dated 19.9.2011 (included in the combined Order-in-Appeal Nos.158/2011 (MST) to 170/2011 (MST) all dated 19.9.2011). But the CESTAT Final

Order 40369/2019 dated 15.2.2019 is silent on the above issue. There were no discussions or findings put forth by CESTAT in favour/against the above issue."

4. Prima facie, the contention of the learned counsel for the Revenue appears to be correct and there seems to be no discussion on the issue of limitation by the learned CESTAT in the order impugned before us. Therefore, we dispose of the present Appeal with liberty to the Revenue to raise the said issue again before the learned Tribunal and we expect the learned Tribunal to pronounce upon the said issue after giving opportunity of hearing to both the parties. With this observation, the present Appeal is disposed of. No costs. Consequently, the connected Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar(C.O)

//True Copy//

Sub Assistant Registrar

ssk.

To:

1. The Registrar,
   Customs, Excise and Service Tax
   Appellate Tribunal,
   South Zonal Bench, Chennai.

2. Commissioner of GST & Central Excise,
   Chennai South Commissionerate,
   MHU Complex, No.692, Anna Salai,
   Nandanam, Chennai 600 035.

+1cc to Mr.T.L.Thirumalaisamy Advocate, S.R.No.385

C.M.A.No.4755 of 2019

aa03/02/2020