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Dear Professional Colleagues,

No denial of Cenvat credit availed on invoices issued in the name of unregistered premises

We are sharing with you an important judgement of the Hon'ble CESTAT, Delhi in the case of *M/s. Allspheres Entertainment Pvt. Ltd. Vs. CCE, Meerut [2015 (8) TMI 953 – (CESTAT DELHI)]* on the following issue:

Issue:

Whether the Department is justified in denying Cenvat credit availed by the Assessee on sole ground that the invoices were issued to the Branch office of the Assessee, which was unregistered?

Facts & Background:

Allspheres Entertainment Pvt. Ltd. ("**the Appellant**") is registered with the Service Tax Department in the category of 'Event Management Services' ("**EMS Services**") with its premise at Nainital ("**Nainital Office**") registered with the Service Tax Department. During 2011-12, the Appellant was, *inter alia*, engaged in rendering the EMS Services in Delhi – NCR, for which the Company maintains a temporary "Field office" at Delhi ("**Delhi Office**") to facilitate rendering of the EMS Services.

The Appellant received various Input Services ("**the Impugned Services**") in Delhi, which were used by them for rendering taxable Output Services. Accordingly, the Appellant availed Cenvat credit of the Service tax paid on the Impugned Services used for rendering taxable Output Services at Delhi.

The Department raised the Show Cause Notice dated April 16, 2014 alleging that the Appellant had availed inadmissible Cenvat credit without having proper documents as prescribed under Rule 9 of the Cenvat Credit Rules, 2004 ("**the Credit Rules**") read with Rule 4A of the Service Tax Rules, 1994 ("**the Service Tax Rules**"), since the invoices were containing address of Delhi Office instead of Nainital Office.

Later on, the Ld. Adjudicating Authority as well as the Ld. Commissioner (Appeals) upheld disallowance of Cenvat credit to the tune of Rs. 1,87,391/- along with imposition of interest and penalty. In addition, penalty of Rs. 20,000/- was imposed for late filing of ST-3 Returns under Section 70 of Finance Act, 1994 ("**the Finance Act**") read with Rule 7 of the Service Tax Rules. Further, penalty of Rs. 10,000/- under Section 77 of the Finance Act was also imposed. Being aggrieved, the Appellant preferred an appeal before the Hon'ble CESTAT, Delhi.

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We pleaded the matter on behalf of the Appellant and put forth the following submissions:

- Eligibility of Cenvat credit availed on the Impugned Services under Rule 2(l) of the Credit Rules is not in dispute;
- All the particulars as required under Rule 4A of the Service Tax Rules are contained in the invoices issued by the Input Service Provider to the Appellant except that the invoices were containing address of Delhi field office instead of Nainital Office;
- The Credit Rules per se nowhere restricts that the invoices for Input Services should be addressed in the name of registered premises only;
- Even, if the allegation is accepted then in such a scenario, Service tax paid by the Appellant on account of the EMS Services rendered from Delhi office should also have been objected by the Department;
- Cenvat credit cannot be denied on basis of minor procedural irregularities;
- In the case of ***Manipal Advertising Services Pvt. Ltd. Vs. C.C.E., Mangalore [2010 (19) S.T.R. 506 (Tri. - Bang.)]***, the Hon'ble CESTAT, Bangalore held that if a person is discharging Service tax liability from his registered premises, the benefit of Cenvat credit on the Service tax paid by the service providers cannot be denied to the assessee only on the ground that the said invoices are in the name of branch offices.
- The Hon'ble High Court of Karnataka in the case of ***mPortal India Wireless Solutions P. Ltd. Vs. C.S.T., Bangalore [2012 (27) S.T.R. 134 (Kar.)]***, has held that the Credit Rules does not mandate registration with Department for availing Cenvat credit and denial of benefit on the ground non-existent in law is unjustified.

Held:

The Hon'ble CESTAT, Delhi accepted the contentions of the Appellant and held that in the absence of any such dispute regarding availment of Impugned Services and their utilization for payment of Service tax or proper accounting of the same, the denial of Cenvat Credit of Service tax paid on Impugned Services by Nainital office of the Appellant on the sole ground that the invoices issued are in the name of the Appellant's unregistered Delhi office is unjustified since the head office which is registered with the Department has discharged the Service tax liability of Delhi office. The defect in the invoices is only procedural lapse or rather a curable defect.

Further the Hon'ble Tribunal also reduced the late fees under Section 70 of the Finance Act to Rs. 5,000/-, and set aside the penalty under Section 77 of the Finance Act.

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Hope the information will assist you in your Professional endeavours. In case of any query/ information, please do not hesitate to write back to us.

Thanks & Best Regards,

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