

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD**

REGIONAL BENCH - COURT NO. - I

Service Tax Appeal No. 26080 of 2013

(Arising out of **Order-in-Original** No.185/2012 (H-II) S.Tax dated 20.12.2012 passed by
Commissioner of Customs, Central Excise & Service Tax, Hyderabad)

M/s IVY Comptech Pvt Ltd.,

Banjara Hills,
Road No.2,
Hyderabad,
Telangana - 500 034.

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APPELLANT

VERSUS

**Pr. Commissioner of Central Excise
and Service Tax
Hyderabad - II**

Kendriya Shulk Bhavan,
L.B. Stadium Road,
Basheerbagh,
Hyderabad,
Telangana - 500 004.

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RESPONDENT

APPEARANCE:

Shri Lakshman Kumar K & Shri Sriman Narayana, CAs for the Appellant.
Shri V.R. Pavan Kumar, Authorized Representative for the Respondent.

**CORAM: HON'BLE Mr. A.K. JYOTISHI, MEMBER (TECHNICAL)
HON'BLE Mr. ANGAD PRASAD, MEMBER (JUDICIAL)**

FINAL ORDER No. A/30287/2026

Date of Hearing: 03.02.2026
Date of Decision: 15.05.2026

[ORDER PER: A.K. JYOTISHI]

M/s IVY Comptech Pvt Ltd., (hereinafter referred to as appellant) are in appeal against the Order-in-Appeal dated 20.12.2012, whereby, the Commissioner (Appeals) has upheld the order of the Adjudicating Authority denying the credit in respect of input services for which the appellant had claimed rebate. This was essentially done on the basis that there was no nexus between input services and the output services exported (impugned

order), as also, certain credit pertained to period 2006-07 and 2007-08, when the appellant was not registered under Service Tax.

2. Brief fact of the case, is that the Department noticed that the appellant has filed a rebate claim on account of Export of Service for an amount of Rs. 88,49,479/- for the period April 2010 to September 2010 in terms of Notification No. 11/2005-ST dated 19.04.2005. On verification of claim and supporting documents, the Sanctioning Authority noticed that during the period from 2006-07 to 2007-08, during which Cenvat Credit was availed, the assessee was neither registered with the Department nor had filed any returns and therefore in the absence of the same their co-relation/nexus with the output service could be established. The Refund Sanctioning Authority also noticed that as per Section 69 of Finance Act 1994, every person liable for pay service tax is required to apply for registration in form ST-1 within a period of 30 days from the date on which the service tax under Section 66 of Finance Act 1994 is levied and accordingly, the appellant should have obtained registration under Information Technology Software Services (ITSS) not later than 01.04.2006 to get the benefit under Rule 9 of Cenvat Credit Rules 2004 (CCR), whereas, they got themselves registered with the Department only on 25.06.2008. Therefore, an amount of Rs. 1,33,43,950/- availed as credit during the period 2006-07 to 2007-08 when assessee was not registered with the Service Tax Department was not considered eligible. Additionally, in respect of Cenvat Credit of Rs. 32,17,408/- availed during the period April 2010 to September 2010 in respect of certain input services, it was not found to have any direct nexus in providing output services in terms of Section 2(l) of CCR. These services were mostly in the nature of life insurance provided to employees, rent-a-

cab, hotel bills, air tax, medical check-up of employees, AMC having no nexus, vehicle maintenance etc., and therefore credit of Rs. 5,52,674/- was denied and only granted rebate of Rs. 24,35,761/-. In other words, out of total rebate claim of Rs. 88,49,119/-, the Sanctioning Authority granted an amount of Rs. 24,35,761/- only and also held that an amount of Cenvat Credit of Rs. 1,36,75,261/- taken during the period 2006-07 to 2007-08 was ineligible for refund.

3. Learned Advocate for the appellant has mainly contested that the appellant is a EOU/STPI providing information technology supporting services and business support service and also registered under Service Tax with effect from 25.06.2008. He also submits that the impugned order suffers from various infirmities including non-consideration of their grounds and the order being non-speaking in nature. On the issue regarding eligibility of Cenvat facility without having taken the registration, he has essentially submitted that the requirement for taking registration is when a person is liable to pay service tax whereas, since all the services provided by them were exported during the period and not leviable to Service Tax and therefore, there was no requirement for registration at all. He has also relied on the judgment of Hon'ble Karnataka High Court in the matter of Mportal India Wireless Solutions P Lt., Vs CST, Bangalore [2012 (27) STR 134 (Kar)] wherein, it was held that refund could not be denied for non-registration when the registration is not required. He has also relied on various other decisions of the Co-ordinate Benches as under:

- a. M/s. Intellegroup Asia Pvt. Ltd. Versus The Commissioner of C, CE & ST, Hyderabad-IV [2017 (1) TMI 95 - CESTAT HYDERABAD]
- b. M/s Advanta India Ltd Versus Commissioner of Central Tax Hyderabad – I [2025 (10) TMI 618 - CESTAT HYDERABAD]

Further, he has also relied on certain judgments of Hon'ble High Courts of Madras, Allahabad and Karnataka as under:

- a. M/s. A.G.S. Health Private Limited Versus Commissioner of GST and Central Excise, Chennai [2025 (10) TMI 879 - CESTAT CHENNAI]
- b. The Commissioner of GST & Central Excise Versus M/s. Visual Graphics Computing Services India Pvt Ltd [2018 (7) TMI 1394 - MADRAS HIGH COURT]
- c. The Commissioner of GST & Central Excise, Chennai Versus BNP Paribas SundaramGlobal Securities Operations Pvt Ltd. [2018 (6) TMI 676 - MADRAS HIGH COURT]
- d. COMMISSIONER, SERVICE TAX Versus PANGEA 3 LEGAL DATABASE SYSTEMS P. LTD. [2017 (2) TMI 1384 - ALLAHABAD HIGH COURT]
- e. The Commissioner of GST & Central Excise, Chennai North Commissionerate, Chennai Versus M/s. Rakindo Kovai Township Ltd. [2021 (3) TMI 130 - MADRAS HIGH COURT]
- f. The Commissioner of GST & Central Excise Versus M/s. Visual Graphics ComputingServices India Pvt Ltd [2018 (7) TMI 1394 - MADRAS HIGH COURT]
- g. Principal Commissioner of Central Tax Bangalore, Represented By DeputyCommissioner Of Central Tax Bangalore Versus M/s. Huawei Technology India Pvt., Ltd., [2022 (2) TMI 855 - KARNATAKA HIGH COURT]

He further submits that they were engaged exclusively in the provision of export services, which were not liable to service tax in terms of Notification No. 9/2005-ST dated 03.03.2005 since the output service itself was exempted from service tax and therefore the appellant was not required to obtain any service tax registration. Therefore, rejection of rebate claim on the ground of non-registration amounts to imposing condition not provided by law. He has further submitted that the Cenvat Credit pertaining to the year 2006-07 to 2007-08 was taken in June 2008 after obtaining registration and it is a settled matter that time limit is not applicable for availment of credit for the disputed period as per Cenvat Credit Rules (CCR). He has relied on the following judgments:

- a. Coromandel Fertilizers Ltd vs Commr. Of C. Ex. (A), Visakhapatnam-IV [2009 (239) E.L.T 99 (Tri-Bang)]
- b. COMMISSIONER OF CENTRAL EXCISE, AHMEDABAD Versus PIERLITA INDIA PVT. LTD. [2011 (273) E.L.T. 535 (Tri.-Ahmd)]
- c. Commissioner Of C. Ex., Ahmedabad Vs Lubi Electronics [2009 (245) E.L.T 551 (Tri-Ahmd)]

4. In so far as denial on the grounds of not having nexus is concerned, his submission is that the denial of the credit on the ground that there is no nexus between input service and the output service, these issues are no longer res-integra as held in catena of judgments by the Co-ordinate Benches. Essentially, the CCR provides for taking credit of input service in relation to any activities which were used in activity relating to business, which got amended only in 2011 Finance Act. Therefore, during the disputed period prior to amendment, the credit is eligible as long as it relates to business. He has relied on the following judgments:

- a. SANMAR FOUNDRIES LTD. Versus COMMISSIONER OF C. EX., TRICHY [2016 (43) S.T.R. 362 (Tri. - Chennai)]
- b. M/s Xilink India Technology Services Hyderabad Versus The Commissioner, C.C. E& S.T Hyderabad-IV [2016 (8) TMI 40 - CESTAT HYDERABAD]
- c. Mentor Graphics India Pvt. Ltd. Versus CCE, C& ST, Hyderabad-II [2017 (3) TMI 620 - CESTAT HYDERABAD]
- d. GMR Hyderabad International Airport Ltd Versus Commissioner of Central Excise & Service Tax, Hyderabad - IV [2023 (10) TMI 504 - CESTAT HYDERABAD]

He also pleads that they are entitled for not only rebate but they are also entitled for interest on the said delayed grant of rebate. He has relied on the judgment in the case of Spentex Industries Ltd., Vs Commissioner of Central Excise, Indore [2016 (343) ELT 928 (Tri-Del)].

5. Learned AR on the other hand submitted that their contention that they are eligible for Cenvat Credit without getting registration with the Department solely based on the Mportal India Wireless Solutions P Ltd., supra, wherein, it is not sustainable as the said order of the Hon'ble High Court did not examined the certain legal provisions in Service Tax Act, Service Tax Rule, CCR and therefore the said order is per-in-curiaum. Moreover, the Hon'ble Karnataka High Court allowed the Cenvat Credit based solely on the ground that both parties in the case were unable to point out any provision in law to the contrary and hence the said decision is not having a binding precedence. Moreover, the decision in the case of Mportal was accepted by the Department on monetary grounds. He also submits that as observed by Hon'ble Supreme Court in the case of M/s Hyder Consulting (UK) Ltd., reported in [2014 (11) TMI 1240 (SC)], as also in the case of State of U.P. Vs Synthetics and Chemicals Ltd.,[1991 (4) SCC 139], if a judgment does not considered the relevant statutory provisions may not have a binding precedence as taken tantamount as if the Court has declared the law on a given subject matter. In so far as denial of Cenvat Credit of certain input services on account of not having nexus, he has submitted that Cenvat Credit on entertainment expenses is inadmissible as it cannot be said that it has been used for providing any taxable output service. He has also distinguished the various case laws relied by the appellant. He also distinguished the judgment in the case of Commissioner of GST and Central Excise Vs Visual Graphics Computing Services India Pvt Ltd., supra. His submissions are that the Hon'ble Madras High Court in this case relied on the decision in the case of Tavant Technologies India Pvt Ltd., of High Court reported in [2016 (3) TMI 353], which had again solely relied on Mportal judgment, supra, as also on Commissioner of Service Tax Vs Atrenta India

Pvt Ltd., [2017 (2) ADJ 590] relied upon by Madras High Court, which had again solely relied on Mportal decision. He has pointed out that in the case of Visual Graphics Computing Services India Pvt Ltd., the Hon'ble High Court considered the earlier judgment in the case of CCE, Coimbatore Vs Sutham Nylocots [2014 (306) ELT 255 (Mad)], wherein, it was categorically held that assessee is entitled to any Cenvat Credit only subsequent to the date of registration with the Department.

6. Heard both the sides and perused the records.

7. The core issue to be decided is that:

(a) denial of credit of Rs. 1,33,43,950/- on the ground that the same was availed during the period, when they were not registered under Service Tax.

(b) denial of certain amount of credit on the ground that the input service have no nexus with the provision of output service in terms of export provisions under CCR.

8. In so far as the first issue is concerned, we find that the appellants are mainly relying on the judgment of Hon'ble High Court of Karnataka in the case of Mportal, supra, as also certain other judgments of other High Courts of Allahabad and Madras in support that the credit taken prior to the date of registration is permissible. Learned AR has vehemently opposed the reliance placed on the Mportal on the grounds that the said judgment is per-in-curiam in as much as it has not examined various law points, as also, the legal provisions regulating availment of credit in terms of CCR and therefore the said judgment, especially keeping in view the Supreme Court judgment cited by him, is to be treated as per-in curiam. He has further submitted that

the other judgments cited by the appellants are also primarily based on the Mportal judgment and therefore, if any judgment relied on a judgment, which is to be treated as per-in-curiam, then the other judgments are also to be treated as per-in-curiam.

9. We find that though in the identical factual matrix in the case of Mportal, the Hon'ble Karnataka High Court held that credit availed prior to the date of registration is eligible and can be considered for granting a rebate, however, we also find that there is another judgment cited by the Learned AR, which has also been pronounced by Hon'ble Madras High Court in the case of Sutham Nylocots, supra. Therefore, in this case, different High Courts have taken different views. While one set of decision are clearly following the line taken by the Hon'ble High Court in the case of Mportal, there is also differing judgment of Madras High Court in the case of Sutham Nylocots covering similar issue.

10. In order to understand whether registration is a necessary requirement or a pre-condition for availment of Cenvat Credit, we have examined the relevant provisions under the Finance Act 1994. As per Section 69, every person who is liable to pay service tax shall within such time and in such manner and form, as may be prescribed, make an application for registration to the Superintendent of Central Excise. Therefore, if we consider the ground taken by the appellant, it is mandatory only for the person who liable to pay service tax then only they are required to take registration. In the factual matrix of the present appeal it is not in dispute that they were exporting services and therefore no service tax was payable. In this regard, the appellants have relied on the judgment based by the Co-ordinate Bench in the case of Commissioner of Service Tax, Chennai Vs e-care India Pvt. Ltd.

[2011 (22) S.T.R. 529 (Tri. - Chennai)] wherein, it was inter alia, held as follows:

“Further, the relevant rules require only those assesseees to take registration who are required to pay service tax. This is a case where the respondent-assesseees were not liable to pay any service tax but are merely claiming refund of the unutilized credit of tax paid on input service. As such, the order passed by the lower appellate authority requires no interference. Consequently, the Department’s appeals are rejected. Both the stay applications also stand disposed of.”

Therefore, in the present case, they were having certain invoices in respect of which they had paid service tax and therefore they took the credit at the time of their taking registration on 25.06.2008. We also note that in terms of Rule 4 and specifically Rule 4(7), it provides for conditions for allowing Cenvat Credit and there is no provision that said credit cannot be availed if the appellants are not registered for Service Tax. Similarly, under Rule 3 also there is no such provision barring a person from taking credit. We also note that the Rule 9 also prescribes for the documents based on which credit can be allowed but it does not impose any restriction regarding taking of service tax registration as a pre-condition for taking the said credit. Therefore, a plain reading of various relevant statutory provisions does not indicate that a person is required to have a service tax registration before he can take credit, however, he cannot utilise it without getting registered and following relevant provision, rules etc. It is also obvious that prior to taking of registration, the person will not be maintaining any statutory record or following any statutory provisions. However, there is nothing on record which would show receiving certain input services, were going into the export of services cannot be accumulated or accounted for in their private record. It is also relevant that during that period they were only exporting the services and though leviable to Service Tax, they were not required to

pay any service tax subjected to any fulfilment of certain conditions. It is not in dispute that they were not fulfilling conditions entitling them the benefit of export of service. Thus, in this factual matrix, they were not in a position to utilise any of this credit as they were not liable to pay any service tax.

11. We, therefore, find that in the facts of the case, the reliance placed by the appellant on various judgments including *Mportal*, supra, is correct in as much as there is no such statutory provision which disentitled them from taking the credit prior to the date of registration. However, taking and utilisation of the credit would still be regulated by relevant provisions of CCR, including taking of credit on proper specified document, it's nexus with the provision of output service etc. Therefore, the denial of the credit solely on the ground that it pertained to period when the appellants were not registered but admittedly exporting taxable service is not legally sustainable in view of the judgments of various High Courts cited, supra, and followed by Co-ordinate Benches. Further, we find that the case laws relied by the Learned AR, the judgment of Hon'ble High Court of Chennai in the case of *Sutam Nylocots*, supra, is distinguished on fact in as much as in the case of *Sutham Nylocots*, the appellant had failed to furnish proof of compliance with the statutory provisions such as payment of duty, nature of inputs used and duty paid thereon in the manufacture of dutiable finished goods. In order to substantiate the claim for Cenvat Credit. Moreover, we also observe that the Hon'ble Madras High Court in the case of *Commissioner of Service Tax-III, Chennai Vs CESTAT, Chennai* [2017 (3) GSTL 45 (Mad)] wherein, the said judgment of *Sutham Nylocots* was also referred, distinguished. We also note that Hon'ble High Court of Allahabad in the case of *Commissioner of Service Tax, Noida Vs Atrenta India Pvt Ltd.*, [2017 (48) STR 361 (All)] also

considered this judgment and it was categorically held that there is no statutory conditions that stipulates registration as a precedent to claim Cenvat Credit under CCR. Therefore, respectfully relying on the judgment of Hon'ble Karnataka High Court, Madras High Court and Allahabad High Court cited, supra, as also certain judgments of Co-ordinate Benches relied upon by the appellant, we find that they will be eligible to take the credit of unutilised credit in respect of input service on the date of their taking the registration subject to their complying with other provisions which regulate taking of credit. This would, however, require re-examination of the factual matrix including supporting documents by the Original Authority to ensure that such credit was otherwise eligible for being taken as credit in terms of relevant provisions prevailing during the relevant time.

12. In so far as issue at (b) is concerned, we find that all these issues are now fairly settled by various decisions of Co-ordinate Benches, wherein, various input services have been considered as an eligible input service in relation to provision of output service in a given factual matrix or output service. We find that since the period pertains prior to the amendment vide the Finance Act 2011, where the eligibility in respect of any input service which were used in relation to the business was eligible and therefore it was having a wider scope as held by the Co-ordinate Bench in the case of Sanmar Foundries Ltd and M/s Xilink India Technology Services, supra. Moreover, catena of judgments have been passed by the Co-ordinate Benches in relation to various disputed input services namely management, maintenance or repair service, air travel agent service, outdoor catering service & convention service, insurance for employees, entertainment expenses etc. It is apparent that these case laws cited by appellant have not

been considered by the Original Adjudicating Authority to decide whether they would be eligible for such credit or not. We find that in view of these judgments this needs to be re-examined afresh after carefully examining the factual context relevant to the appellant and by applying the ratios and decisions of the Co-ordinate Bench relating to the eligibility of such input services, where the credit has been denied and rebate has also been disallowed.

13. In view of the above, the order of the Commissioner (Appeals) is set aside and the matter is remanded back to the Original Authority to re-determine the eligibility of the Cenvat Credit and thereafter allow the amount of rebate admissible to the appellant keeping in view of the observations, as also, various case laws cited by the appellant.

14. Appeal allowed by way of remand.

(Pronounced in the open court on 15.05.2026)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)