IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

MISC Application No. ST/MISC/54064/2014 in
APPEAL No. ST/3088/2012-CU[DB]

(Arising out of Order-in-Original No. 08/COMMISSIONER/NOIDA/2012-13 dated 06/07/2018 passed by Commissioner of Customs, Central Excise & Service Tax, Noida)

M/s Galaxy Mercantiles Limited **Appellant**

Vs.

Commissioner, Central Excise & Service Tax, Commissionerate, Noida

Respondent

Appearance:

Shri Pradeep Kumar Mittal (Advocate) for Appellant
Shri Sandeep Kumar Singh (Dy. Commr.) AR for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 08/03/2018
Date of Decision : 08/03/2018

FINAL ORDER NO. 70762/2018

Per: Anil G. Shakkarwar

Present appeal is arising out of Order-in-Original No. 08/Commissioner/Noida/2012-13 dated 06.07.2012 passed by Commissioner of Central Excise & Service Tax, Noida.

2. Brief facts of the case are that the appellant were engaged in providing services under the category of Renting of Immovable Property. They have availed and utilized Cenvat

Credit of Central Excise Duty paid on Cement, Glass and Steel and Cenvat Credit of Service Tax paid on Architect Services and Work Contract Service towards discharge of service tax on renting of immovable property for the period from 2007-08 to 2010-11 (upto August 2010). It appeared to Revenue that the said Cenvat Credit was not admissible for discharge of service tax on renting of immovable property service, therefore, the appellant were issued with a show cause notice dated 07.03.2011 wherein there was a proposal to disallow Cenvat Credit of Rs.4,08,08,286/-. Further there was a proposal to recover service tax amounting to Rs.3,20,84,784/- which was discharged through utilizing said Cenvat Credit. It was contended in the said show cause notice that appellant were not entitled to utilize the said Cenvat Credit for discharge of service tax liability on renting of immovable property service. On contest the issue was decided through impugned Order-in-Original wherein proposals in the show cause were confirmed and equal penalty was imposed. Aggrieved by the said order appellant is before this Tribunal.

3. Heard the learned counsel for the appellant who has submitted that the matter is no more res-integra in view of the ruling by Hon'ble High Court of Andhra Pradesh at Hyderabad in the case of Commissioner of Central Excise, Visakhapatnam-II vs. Sai Sahmita Storages (P) Ltd. at MANU/AP/0510/2011 reported at 2011 (23) STR 341 (A.P.).

Further the learned counsel submitted that relying on the said ruling Single Member Bench of this Tribunal in the case of DLF Cyber City Developers Ltd. vs. Commissioner of Central Excise & CGST, Gurugram, in Appeal No. ST/60752/2017 decided through Final Order No. 60018/2018 dated 03.01.2018, has held that inputs and input services were utilized by the appellant for construction of building which has been let out by the appellant and in that case paying service tax thereon under the category of renting of immovable property service, therefore, the appellant was entitled to avail said Cenvat Credit. Learned counsel has pleaded that since the issue is already settled and the impugned Order-in-Original may be set aside.

4. Heard the learned AR who has supported the impugned order.

5. Having considered the rival contention and on perusal of case ready and on going through the case laws relied upon by learned counsel, we find that the issue is no more res-integra and the same has been settled through the ruling by Hon'ble High Court of Andhra Pradesh at Hyderabad in above stated case of Commissioner of Central Excise, Visakhapatnam-II vs. Sai Sahmita Storages (P) Ltd. wherein in Para 7 the Hon'ble High Court has ruled as follows:-

"In a pliant reading of both the above definitions would show that, unless excluded, all goods used in relation to manufacture of final product and for any other purpose used by a provider of taxable service for providing an output service are eligible for Cenvat Credit."

Relying on the said ruling, in Para 17 Single Member Bench of this Tribunal in the above stated case of DLF Cyber City Developer Ltd. has held as follows:-

"In view of the above analysis, I hold that as all the inputs/input service has been used by the appellant for construction of a building which has been let out by the appellant and paying service tax thereon under the category of Renting of Immovable Service therefore, the appellant is entitled to avail cenvat credit. Accordingly, I do not find any merit in the impugned order, the same is set aside. The appeal is allowed with consequential relief."

In view of the above ruling we hold that appellant was entitled for Cenvat Credit of Central Excise Duty paid on Cement, Glass and Steel as well as Cenvat Credit of Service Tax paid on Architect Services and Work Contract Services for discharge of Service Tax on Renting of Immovable Property Service in the present case. We, therefore, set aside the impugned Order-in-Original and allow the appeal. The appellant shall be entitled for consequential relief as per law. MISC Application stands disposed of as infructuous.

(Dictated and pronounced in Court)

Sd/-	**Sd/-**
(Anil Choudhary)	**(Anil G. Shakkarwar)**
Member (Judicial)	**Member (Technical)**

Ankit