CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE

Appeal(s) Involved:

ST/20979/2016-SM

[Arising out of Order-in-Appeal No. COC-EXCUS-000-APP-244-15-16 dated 23/12/2015 passed by Commissioner of Central Excise , COCHIN(Appeal)]

Taj Malabar Hotel
(vivanta Malabar Cochin) Willingdon Island
Cochin
COCHIN - 682009
KERALA

Appellant(s)

Versus

Commissioner of Central Excise, Customs and Service Tax Cochin-cce
C R BUILDING,
I S PRESS ROAD, ERNAKULAM,
COCHIN, - 682018
KERALA

Respondent(s)

Appearance:

Shri Kurian Thomas, Advocate
MENON & PAI
IS PRESS ROAD, COCHIN
KOCHI - 682018
KERALA

For the Appellant

For the Appellant

Shri Madhupsharan, Asst. Commissioner(AR) — For the Respondent

Date of Hearing: 11/01/2018
Date of Decision: 11/01/2018

CORAM:
HON'BLE SHRI S.S GARG, JUDICIAL MEMBER

Final Order No. 20043 / 2018

Per : S.S GARG

The present appeal is directed against the impugned order dt. 23/12/2015 passed by the Commissioner(Appeals) whereby the Commissioner(Appeals) has rejected the appeal of the appellant.

2. Briefly the facts of the present case are that the appellants are providing Mandap Keeper service, dry cleaning service, beauty parlor service, internet café service, outdoor catering service, health club & fitness service, business support service, sponsorship service and renting of immovable property service. During the period 2008-09 and 2009-10, appellant availed 100% CENVAT credit on the input services provided by M/s. Indian Hotels Co. Ltd. (IHCL) under management consultancy and utilized it for payment of service tax. On examination of the agreement between the parties, the Department found that the services rendered by IHCL are in the nature of Business Auxiliary Service and not Management Consultancy Service and as per Rule 6(5) of the CENVAT Credit Rules, 2004, full credit cannot be taken. On this allegation, show-cause notices were issued and after following the due process, original authority confirmed the demand and aggrieved by the said order, appellant filed appeal before the Commissioner(Appeals) who also rejected the appeal. Hence the present appeal.

3. Heard both the parties and perused records.

4. The Learned Counsel for the appellant submitted that the impugned order is not sustainable in law as the same is passed contrary to the law and binding judicial precedent. He further submitted that the services availed by the appellant are in connection with the provisions of taxable service on which service tax is duly being paid and hence classified to be input services as defined by Rule 2(l) of CCR 2004. He further submitted that by virtue of wide interpretation given to the term input

service, any services received in relation to taxable service could be utilized for availing the cenvat credit. He also submitted that since the service provided on output service in respect of taxable and non-taxable service being the same and the administrative infrastructure relating to the said services being the same, the services availed by the appellant are in connection with the provisions of various taxable services on which service tax is duly paid and hence held to be input service for the purpose of CCR, 2004. He further submitted that services received from Indian Hotels are in the nature of management consultancy service and not business auxiliary/support service. He further submitted that Indian Hotels had classified the service under management consultant service and paid service tax accordingly. Therefore, the department could not deny the credit of the said service tax paid at the service recipient and service receivers end. In support of this submission, he relied upon the following authorities:

i. Sarvesh Refractories (P) Ltd. Vs. CCE 2007 (218) ELT 488 (SC);
ii. CCE Vs. MDS Switchgear 2008 (229) ELT 485 (SC);
iii. CCE & C Vs. Purity Flexpack Ltd 2008 (223) ELT 361 (Gujarat);
iv. CCE & C Vs. MDS Switchgear Ltd 2008 (229) ELT 485 (SC);
v. Hindustan Lever Ltd 2000 (121) ELT 437 (T);
vi. Hindustan Coca Cola Beverages Pvt Ltd Vs. CCE, Meerut-II (2010) 19 STR 280 (Cestat, New Delhi);
vii. Manikgarh Cement Vs. CCE, Nagpur (2010) 20 STR 600 (Cestat, Mumbai);
viii. Pacific Exports Vs. CCE, Ahmedabad (2013) 31 STR 14 (Cestat, Mumbai);
ix. M/s. Piem Hotels Ltd Vs. CCE, Nasik, CST, Mumbai 2016-TIOL-788-Cestat-Mum
x. Taj Kerala Hotels and Resorts Ltd. Vs. CCE,C&ST, Cochin [Final Order No.22803-22804/2017 dt. 15/11/2017]

5. On the other hand, the Learned AR reiterated the findings of the impugned order.

6. After considering the submissions of both the parties and perusal of material on record as well as various judgments relied upon by the appellant cited supra, I am of the considered view that the issue involved in the present case is no more res integra and has been settled by various decisions cited supra wherein it has been consistently held that there cannot be different classification for the same services at the end of service provider and at the end of service recipient. Further, I also find that for the same service, the Commissioner (Appeals) vide his order dated 06.03.2007, has allowed the case on identical issue. Further, I also find that in the case of M/s. Piem Hotels Ltd, cited supra, the Tribunal has held that it is well settled proposition of law that jurisdictional officer at recipient end are not empowered to question or change the classification or valuation at supplier's end based on various judgments of Apex Court. Therefore, by following the ratios of the above cases and decision of this Tribunal dt. 15/11/2017 in the appellant's own case involving similar issue, I am of the view that the impugned order is not sustainable in law and therefore the same is set aside by allowing the appeal of the appellant.

(Operative portion of the Order was pronounced
in Open Court on **11/01/2018**)

S.S GARG
JUDICIAL MEMBER

Raja...