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

Appeal No.ST/175/2012

[Arising out of Order-in-Original No.131/2011 dt. 30.12.2011 passed by Commissioner of Central Excise, Chennai-III]

Ambattur Developers (P) Ltd. — Appellant

Versus

Commissioner of Service Tax,
Chennai — Respondent

Appearance :

Shri M. Karthikeyan, Advocate
For the Appellant

Shri B.Balamurugan, AC (AR)
For the Respondent

CORAM :

Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)
Hon'ble Shri P. Dinesha, Member (Judicial)

Date of hearing / decision : 10.12.2018

FINAL ORDER No. 43173 / 2018

Per Shri Madhu Mohan Damodhar

The facts of the case are that the appellants are engaged in providing of Renting of Immovable Property. They are registered in the service tax category of Renting of Immovable Property (RIP) Service and Business Auxiliary Service (BAS). Pursuant to audit, it appeared to the department that appellants were rented out immovable properties by sub-leasing the premises taken by them on lease from the actual owners of such properties; that appellant was also constructing a hotel at Velacherry on the premises owned by them and had received services from the companies situated both outside India and in India relating to design and technical consultancy for kitchen, general design, restaurant, landscaping, etc. utilized towards the construction of the hotel. Appellants paid service tax in respect of services imported by them from service providers situated outside India under reverse charger mechanism in terms of Rule 2(1) (d) (iv) of Service Tax Rules, 2004. It was noticed that appellants availed cenvat credit of service tax paid on consultancy service, design & technical service, air travel agency service, architect service, construction service and renting of immovable property service, in all availing cenvat credit of Rs.71,94,859/- during the period April 2007 to July 2009. Department took the view that appellants did not provide any taxable output service using said inputs services and hence they were not entitled to take impugned cenvat credit. It also appeared that appellants had paid rent to owners of two properties taken on lease and had further sub-leased the properties to M/s.Concorde Motors and that appellants paid rent to owner of the properties and also remitted the property tax on their behalf; that however appellant deducted the property tax paid from the rent amount collected from the tenants to arrive at the taxable value for payment of service tax apparently resulting in non-payment of Rs.15,365 towards service tax. Accordingly, SCN dt. 04.08.2010 was issued to appellants inter alia, proposing demand of Rs.71,94,858/- on alleged ineligible credits availed during April 2007 to July 2007 and an amount of Rs.15,365/- being short paid service tax for the period April 2008 to September 2009, with interest thereon and imposition of penalties under various provisions of law. Another SCN dt. 19.10.2010 was issued proposing a demand of an amount of Rs.13,20,188/- with interest, for the period August 2009 to July 2010 in respect of alleged ineligible credits availed on input services; The said SCN also proposed imposition of penalty under various provisions of law. These proposals made in the two SCNs were confirmed by the adjudicating authority vide impugned order No.131/2011 d. 30.12.2011 and penalties were also imposed. Aggrieved, appellants are before this forum.

2. When the matter came up for hearing, on behalf of the appellants, Ld. Advocate Shri M. Karthikeyan submits that the matter is no longer *res integra* and that the very same issue has been decided in a number of Tribunal decisions, for example, :-

(1) Navaratna S.G. Highway Prop. Pvt.Ltd. Vs CST Ahmedabad
2012 (28) STR166 (Tri.-Ahmd.)

(2) Vamona Developers Pvt. Ltd. Vs CCE & ST Pune
2016 (42) STR 277 (Tri. – Mumbai)

(3) CCE Goa Vs Kamat Constructions & Resorts Pvt. Ltd.
2016 (42) STR 450 (Tri.-Mumbai)

(4) Oberoi Mall Ltd. Vs CST Mumbai
2017 (47) STR 292 (Tri.-Mukmbai)

(5) Ascendas IT Park (Chennai) Ltd. Vs CST Chennai
2018 (1) TMI 827 – CESTAT Chennai

(4) Rattha Holding Co.Pvt. Ltd. Vs CST Chennai
2018 (9) TMI 1722 – CESTAT Chennai

(5) CCE & ST Raipur Vs Vimla Infrastructure India P.Ltd.
2018 (13) G.S.T.L 57 (Chhattisgarh)

(6) Lemon Tree Hotel Vs CCE Hyderabad
2019 (10) G.S.T.L. 241 (Tri-Hyd).

Ld. Counsel also submits that the appellants are not pressing the disputed service tax demand Rs.15,365/- confirmed in the orders.

3. On the other hand, Ld. A.R Shri B. Balamurugan supports the impugned order.

4.1 After hearing both sides and going through the facts of the case, we find that the Ld. Advocate is correct in his assertion that the ratio of the decisions cited by him fully support their appeal with regard to the disputed input service credits.

4.2 The Hon'ble High Court of Chattisgarh in *CCE & ST Raipur Vs Vimla Infrastructure India P. Ltd.* has held as under :

> "**9.** The respondent was issued show cause notice by the Commissioner on the ground that it has wrongly availed and utilized Cenvat credit and inadmissible Input Service Tax in Central Excise duty paid on Inputs and Capital Goods which have been used for construction of Railway Siding as the goods which were neither the Input Service nor the inputs and Capital Goods for providing "Cargo Handling Services". The Commissioner eventually concluded that the company cannot provide any 'logistic services' viz., "Cargo Handling Services" without the facility of private Railway Side. Hence, it become essential for them to set/construct their own private Railway Side to facilitate smooth loading, unloading of materials like Coal, Iron Ore, Manganese Ore, Bauxite etc. Hence, 'inputs' and 'input services' used in setting up the Railway Private Siding which is further in use of "Cargo Handling Services" is eligible for credit under the Rules, 2004. This view of the Commissioner has been affirmed by the Tribunal.
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> **10.** Reverting back to the definition and the nature of construction activity carried on by the respondent company for erecting the facility of "Cargo Handling Services" it is to be kept in mind that the 'Inputs' have been used for providing output services which is taxable, therefore, by erecting the Railway Siding, the respondent is providing a taxable service for providing an output service, therefore, it is entitled to avail credit under Rule 2004.
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> **11.** In taking the above view, we are fortified by the law laid down by the Division Bench of Andhra Pradesh High Court in the matter of *Commissioner of Central Excise, Visakhapatnam-II* v. *Sai Sahmita*

Storage (P) Limited, 2011 (270) E.L.T. 33 (A.P.) = 2011 (23) S.T.R. 341 (A.P.), wherein it has been held, with reference to definition of 'Input' in Rule 2(k) that all the goods used in relation to manufacture of final product or for any other purpose used by a provider of taxable service for providing output service are eligible for Cenvat credit.

12. Yet again, the Gujarat High Court in the matter of *Mundra Ports & Special Economic Zone Limited* v. *CCE & Cus.* - 2015 (39) S.T.R. 726 (Guj.) has taken the same view by allowing Cenvat credit to the company who has constructed Jetty within the Port Area for providing Port Services.

13. For the above stated reasons, we answer the substantial question of law against the Revenue and in favour of the Assessee Company."

4.3 We find that all the decisions relied upon by the Ld. Advocate have consistently reiterated the ratio that services used for constructing materials which were then rented out are very much eligible input service. We also find that the CESTAT Chennai in *Rattha Holding Co.Pvt. Ltd. Vs CST Chennai* (supra), relying upon the ratio laid down by Hon'ble High Court of Andhra Pradesh in *Sai Samhmita Storages (P) Ltd.* - 2011 (217) ELT 33 (A.P), has held that disallowance of credit on input services used for construction of buildings is justified.

4.4 We do not find any new grounds or reasons to deviate from the ratio of the aforesaid case laws. In the event, impugned order will require to be set aside, except for the service tax demand of Rs.15,365/- along with interest thereon as may be applicable, conceded by the appellants, which we hereby do. Penalties imposed are set aside.

5. Appeal is allowed on above terms with consequential relief, if any, as per law.

(operative part of the order pronounced in court)

(P. Dinesha)
Member (Judicial)

(Madhu Mohan Damodhar)
Member (Technical)

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