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

ST/556/2012

(Arising out of Order-in-Original No. 52/2012 dated 26.03.2012 passed by the Commissioner of Service Tax, Chennai).

M/s. ISS Integrated Facility Services Pvt. Ltd. : Appellant

Vs.

CCE & ST, Chennai : Respondent

Appearance

Shri G. Natarajan, Advocate
for the Appellant

Shri A. Cletus, ADC (AR)
for the Respondent.

CORAM :

Hon'ble Ms. Sulekha Beevi, Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing: **24.01.2019**
Date of Pronouncement: **31.01.2019**

FINAL ORDER No. **40214 /2019**

Per Sulekha Beevi

Brief facts are that the appellants are engaged in providing various housekeeping related services. During the course of audit of accounts, it was noticed that they had collected service charges and reimbursement of expenses incurred by them under different heads. However, appellant had paid service tax only on service charges without including the reimbursable expenses in the taxable value. The department was of the view that the reimbursable expenses are also includable in the taxable value for discharging service tax. It appeared that the assessee thus short paid the service tax of Rs. 45,77,465/- for the period April, 2006 to November, 2009 on this count. The appellant also provided 'Outdoor Catering Service' and claimed abatement of 50% of gross amount under Notification No. 1/2006-ST dated 01.03.2006 and discharged service tax only on the remaining amount. The assessee had availed Cenvat credit on the inputs/input services. It therefore appeared that the appellants are not eligible for abatement and consequently are liable to pay service tax of Rs. 14,27,155/- for the period from April. 2006 to November, 2009. SCN was issued raising the above allegations and proposing to demand service tax of Rs.60,04,620/- along with interest and also imposing penalties. After due process of law, the adjudicating authority confirmed the demand, interest and imposed equal penalty. Aggrieved, appellant is now before this forum.

2.1 On behalf of the appellant, Ld. Counsel, Shri G. Natarajan appeared and argued the matter. He submitted that the first issue is with regard to non-inclusion of reimbursable expenses in the taxable value. He submitted that the decision of the Hon'ble Apex Court in the case of *UOI Vs. Intercontinental Consultants and Technocrats Pvt. Ltd.* - 2018 (10) GSTL 401 (S.C.) has held that the reimbursable expenses are not includable in the total taxable value for determining the tax liability.

2.2 With regard to the second issue, he submitted that the appellant had initially availed the credit on input services attributable to outdoor catering services. However, later they have reversed the credit. The reversal of such credit would tantamount non availment of credit.

3. Ld. AR, Shri A. Cletus, ADC, supported the findings in the impugned order.

4. Heard both sides.

5.1 The first issue is whether the reimbursable expenses are includable in the total taxable value for discharging the service tax liability. The Hon'ble Apex Court in the decision cited by the Ld. Advocate in the case of *Intercontinental Consultants and Technocrats Pvt. Ltd.* (supra) has categorically held that the reimbursable expenses are not includable in the taxable value. Following the same, we are of the view that the demand on this count cannot sustain which requires to be set aside, which we hereby do.

5.2 The second issue is with regard to the demand raised on outdoor catering service alleging that the appellant is not eligible for abatement under Notification No. 1/2006 since, they have not fulfilled the condition stated therein. The appellant has availed the credit on input services which makes them ineligible for availing the benefit of abatement however, it is brought out by the Ld. Counsel that they have reversed the credit. Taking note of this, we are of the opinion that if the credit has been reversed the appellant would be eligible for the benefit of abatement. However, for the limited purpose of verifying that the appellant has been reversed the credit, the matter is required to be sent back to the adjudicating authority.

6. From the discussions made above, the impugned order is modified to the extent of setting aside the demand raised in respect of reimbursable expenses. With regard to the issue of availment of abatement, it is hold that the appellant would be eligible for abatement if the credit is reversed. However for limited purpose of verification whether credit is reversed, the matter is remanded to the adjudicating authority.

7. The appeal is partly allowed and partly remanded in the above terms with consequential benefits, if any, as per law.

(Order pronounced in the open Court on 31.01.2019)

(MADHU MOHAN DAMODHAR)
MEMBER (TECHNICAL)

(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

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