CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

REGIONAL BENCH – COURT NO. III

Service Tax Appeal No.40481 of 2019

(Arising out of Order-in-Appeal No.587/2018 (CTA-II), dated17.12.2018 passed by the Commissioner GST & CE (Appeals-II), Chennai)

M/s. Olam Information Services Pvt. Ltd. **: Appellant**
Ascendas Unit 2 & 3, 12th Floor,
Zenith Building, International Tech Park,
CSIR Road, Taramani, Chennai 600 113.

VERSUS

Commissioner of GST & CE, **: Respondent**
Chennai South Commissionerate,
Chennai 600 035.

APPEARANCE:

Shri V.S. Manoj, Advocate for the Appellant

Ms. T. Ushadevi, Authorized Representative for the Respondent

CORAM:

HON'BLE SMT. SULEKHA BEEVI C.S, MEMBER (JUDICIAL)

FINAL ORDER NO.40484/2020

DATE OF HEARING: 19.01.2020

DATE OF DECISION: 19.01.2020

The brief facts are that the appellants are engaged in providing Information Technology Software Service, Online Information & Database Access Service and/or Retrieval Service to clients located outside India. They filed application under Rule 5 of Cenvat Credit Rules, 2004 seeking refund of unutilised Cenvat credit of service tax paid on input services. Show-cause notice was issued proposing to disallow the credit/refund availed on various services. After due process of law, the original authority allowed credit on certain services but disallowed the credit/refund in respect of other services. On appeal, the Commissioner (Appeals) disallowed the credit on services in the nature of Cleaning – Pest Control Service, Air Travel Agent Service, Car Parking Service etc. Aggrieved by such order, the appellants are now before the Tribunal.

2. On behalf of the appellant, the learned counsel Shri V.S. Manoj appeared and argued the matter. He furnished the details of the services for which the refund was rejected by the Commissioner (Appeals) as under:-

Sl. No.	**Nature of Service**	**Reason for rejection**	**Arguments**
(1)	**(2)**	**(3)**	**(4)**
01	Cleaning Service – Pest Control Service	There is no nexus with output service	Direct nexus is not necessary to establish that the input service is used for providing output service. The service is used toward maintenance and upkeep the premises in amiable condition creating a healthy working atmosphere inside the office. Final Order No.62166-62167/2017, dated 13.12.2017 – CESTAT, Chandigarh (2017) 51 S.T.R.55
02	Air Travel Agent Service	No evidence to establish that services were consumed by the employees in discharge of official stay	There is no dispute on the fact that the appellant made payment for the cost of travel, claimed as reduction under the Income-tax Act. This itself is sufficient to establish that credit is admissible. The finding that the appellant has not produce evidence is without appreciating the Annexure enclosed along with reply to the show-cause notice, Para nO.(ii), Page No.7. (2016) 9 TMI 540. Hawkins Cooker Ltd. (2018) TIOL 96 Robert Bosch Engineering (2017) 51 S.T.R.329

Sl. No.	Nature of Service	Reason for rejection	Arguments
(1)	**(2)**	**(3)**	**(4)**
03	Car Parking Service – Renting of Immovable Property Service	Not integrally connected with output service	Direct nexus is not necessary to establish that the input service is used for providing output service. Manhattan Associates (I) Dev. Centrel Pvt. Ltd., (2017) 5 GSTL 99
04	Group Insurance Service	Specifically excluded	The exclusion is only in respect of personal consumption. Mortan Stanley India Financial Services Ltd. Final Order No.85196-85197/2019, dated 25.01.2019 Final Order No.40003-40004/2016, dated 01.01.2016 Team Lease Services (2014) 73 VST 129
05	Hotel Services	Specifically excluded	The exclusion is only in respect of personal consumption. Para No.(v) Page No.8 to the reply to the show-cause notice. Documentary evidences were filed to establish that the expenditure is not in the nature of personal consumption of the employees. Hondo Motor Cycle (2016 45 S.T.R.397 All Spheres Entertainment Pvt. Ltd. (2016) 41 S.T.R.104
06	General Insurance Service	The insurance is for vehicle which is not a capital good	Insurance is taken for business asset which is used for providing output service.

Sl. No.	Nature of Service	Reason for rejection	Arguments
(1)	**(2)**	**(3)**	**(4)**
08	Banking and other Financial Service	There is no invoice available	Credit was availed based on the charges in theledger which is available in the bank records. Further, service of bank is very much necessary in case where there is an export of service and the receipt in convertible foreign exchange. Morgan Stanley India Financial Services Ltd. Final Order No.85196-85197/2019, dated 25.01.2019 (2016) 9 TMI 540
09	Interior Decorator Service	Not related to output service	Direct nexus is not necessary (2015) 60 Taxmann 119
10	Business Support Service	Discrepancies such as absence of description of service in the invoice, absence of address etc.	Small procedural discrepancies cannot be a reason for denial of substantial benefit. There is no dispute that the service is used for providing output service. Morgan Stanley India Financial Services Ltd., Final Order No.85196-85197/2019, dated 25.01.2019
10	Event Management Service	Not related to output service	Direct nexus is not necessary. Business exhibition is covered in the inclusive part of the definition.

2.1 It is submitted by the learned counsel that the issue with respect to rejection of these services are covered by the various decisions of the Tribunal as cited in the table above.

3. The learned Authorised Representative Ms. T. Ushadevi supported the findings in the impugned order. With respect to Air Travel Agent Service, she submitted that the appellant has not

established that the said service was used for discharging official duty. With regard to Group Insurance Service, the learned Authorised Representative argued that the said services are excluded from the definition of input services and, therefore, not eligible for credit. Similarly, Hotel Services have been availed for personal consumption and rightly disallowed by the authorities below. The General Insurance Service have been availed for insuring vehicles and, therefore, not eligible. With regard to Banking and other Financial Services, the learned Authorised Representative submitted that the appellant had produced merely credit card statements to evidence the payment of service tax and these are not valid documents for availing credit. The appellants have not produced invoices to show the eligibility of credit. With regard to other services, the learned Authorised Representative submitted that the services have no nexus with the output services provided and, therefore, the impugned order does not require any interference.

4. Heard both sides.

5. The **Cleaning Service** – Pest Control Service have been availed for making the premises of the appellant pest free. The appellant has availed Pest Control Services in the nature of Cleaning Services. I, therefore, hold that the disallowance of credit of such services is unjustified and required to be set aside, which I hereby do.

6. The credit availed on **Air Travel Agent Service** have been disallowed alleging that there is no evidence to establish that the services were availed by the employees in discharge of their office duty.

The learned counsel for the appellant has submitted that they have availed deduction under the Income-tax Act of such expenses which itself would establish that the expenses are incurred for the business purposes of the appellant, and that these are not personal travel expenses.

The employees have travelled in connection with the discharge of their office duty and, therefore, credit/refund is eligible. So ordered.

7. **Car Parking Service** – Renting of Immovable Property Service has been disallowed stating that they do not have nexus with the output service. Needless to say that the rent paid for car parking facility enables the employees of the appellant as well as the customers coming to the office of the appellant to park their cars.

In view of the above, I am of the opinion that the disallowance of the credit is incorrect. The rejection of refund in this regard is set aside.

8. **Group Insurance Service** – The refund in respect of Group Insurance Service has been disallowed alleging that it is excluded from the definition of input services.

The appellant has not produced any evidence to show that said services are not availed for personal consumption of the employees.

Hence, I uphold the rejection of refund by the authority below.

9. The reasons for disallowance of credit on **Hotel Services** is that the same is excluded as these services are availed for personal consumption of the employees.

The learned counsel for appellant has submitted that services were not availed for accommodation of the employees while they travelled for business purposes. There is no evidence placed before me to support this argument.

Hence I am of the view that the appellant has to be given a further opportunity to establish their contention furnish evidence that the said service has been used by employees in discharge of their official duty. This issue is remanded to the adjudicating authority.

10. The refund in respect of **General Insurance Service** is availed by the appellant for insurance of Buildings, Vehicles and Equipments of the company.

As per definition of input services, the credit availed on vehicles is not eligible. It is not brought forth from the record whether the entire premium is in respect of insurance for vehicles or whether it includes buildings and equipment also.

For clarification on this issue, I am of the view that the same requires to be remanded to the adjudicating authority who shall reconsider the issue.

11. The credit availed in respect of **Banking and other Financial Services** has been disallowed stating that the appellant has not produced valid documents to evidence the availment of credit.

The learned Authorised Representative has submitted that the appellant has to produce invoices to prove that the service tax on Banking and other Financial Services has been paid.

The appellant has produced the credit card statements before the adjudicating authority to claim the refund. It is common knowledge that banks do not issue invoices in respect of the service tax deducted from the clients. It is reflected in the bank statements. The department does not have a case that the credit services were availed by any individual of the company. Further, the appellant is engaged in export of output service and, therefore, the Banking and other Financial Services availed in regard to foreign remittances is eligible for credit. The ledger extract obtained by the appellant and produced before the authorities would be sufficient documents to evidence the payment of service tax in this regard.

The rejection of refund alleging that the appellant has not produced invoice for payment of service tax is not sustainable, which requires to be set aside, which I hereby do.

12. Credit in respect of Interior Decorator Service, Business support service and Event Management Service have been disallowed

stating that these services do not have any nexus with the output service.

The decision relied by learned counsel for the appellant in the case of *Commissioner of Central Excise, Pune Vs. M/s. Emerson Innovation Centre* reported in *2015-TIOL-887-CESTAT-MUM* has analysed the issue and held that there is no requirement to establish nexus of input service with output service. Moreover, w.e.f. 2012, Rule 5 has been amended wherein, the refund is eligible on input services and it is not necessary that the appellant has to establish that the input services were used for providing the output service.

13. From the foregoing discussions,

(i) the refund in respect of Cleaning Service, Air Travel Agent Service, Car Parking Services, Business Support Service and Event Management Services are allowed.

(ii) The credit in respect of Hotel Services and General Insurances Services are remanded to the adjudicating authority for fresh consideration.

(iii) The credit in respect of Group Insurance Service is rejected upholding the decision of Commissioner (Appeals).

The appeal is partly allowed in above terms with consequential reliefs, if any.

(Dictated and pronounced in the open court)

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

ksr
20-02-2020