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

Appeal No. ST/42115/2016

(Arising out of Order-in-Appeal No. 163/2016 dated 3.8.2016 passed by the Commissioner of Central Excise (Appeals – I), Coimbatore)

M/s. Sree Annapoorna Gowrishankar — Appellant

Vs.

CCE, Coimbatore — Respondent

Appearance

Shri G. Natarajan, Advocate for the Appellant
Shri S. Govindarajan, AC (AR) for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)

Date of Hearing / Decision: **18.08.2017**

Final Order No. 41711/2017

The appellant is aggrieved by the disallowance of CENVAT credit availed on input services namely construction services prior to 1.4.2011.

2. Brief facts are that the appellant who is engaged in providing renting of immovable property services were also availing the facility of CENVAT credit on inputs / input services. During the course of audit, it was noticed that they had availed credit of the service tax paid on construction services.

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Department was of the view that such credit is ineligible. A show cause notice was issued proposing to demand the irregularly availed credit along with interest and also imposing penalties. After due process of law, the original authority disallowed the credit and imposed equal penalty. In appeal, the Commissioner (Appeals) upheld the same. Hence this appeal.

3. On behalf of the appellant, learned counsel Shri G. Naarajan submitted that the construction services were availed by the appellant for constructing the building which was rented out to customers. The appellants being engaged in providing the output services for renting of immovable property service have rightly availed the credit on construction service. He relied upon the judgments in the cases of Mundra Ports & Special Economic Zone Ltd. Vs. Commissioner of Central Excise & Customs – 2015 (39) STR 726 (Guj.) and Varun Industries Vs. Commissioner of Central Excise – 2015 (317) ELT 731 (Tri. Ahmd.).

4. The learned AR Shri S. Govindarajan reiterated the findings in the impugned order. He submitted that such services have no nexus with the output services provided by the appellant and also the services rendered were used for construction of immovable property and therefore the appellants are not eligible for credit.

5. Heard both sides.

6. The period involved is prior to 1.4.2011 and the definition of input services had a wide ambit as included the words "activity relating to business and also services used for setting up for a plant/premises of an office". The appellants being engaged ~~connected~~ in providing renting of immovable property, construction services availed by them for construction of the building which is later rented out is eligible for credit as decided in the judgments relied upon by the appellants.

7. Following the same, I hold that the disallowance of credit is unjustified. The impugned order is set aside and the appeal is allowed with consequential relief, if any.

(Dictated and pronounced in open court)

Sulekha Beevi

(Sulekha Beevi C.S.)
Member (Judicial)

Rex

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