IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT NO. I

Service Tax Appeal No. 41799 of 2019

(Arising out of Order-in-Appeal No. 239/2019 (CTA-II) dated 31.08.2019 passed by the Commissioner of G.S.T. and Central Excise (Appeals-II), Newry Towers, 2054/I, II Avenue, 12th Main Road, Anna Nagar, Chennai – 600 040)

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

VERSUS

The Commissioner of G.S.T. and Central Excise **: Respondent**
Perungudi Division, Chennai South Commissionerate
690, EVR Periyar Maligai,
Anna Salai, Nandanam, Chennai – 600 035

APPEARANCE:

Ms. Radhika Chandrasekhar, Advocate for the Appellant

Ms. Sridevi Taritla, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

FINAL ORDER NO. 40034 / 2022

DATE OF HEARING: 18.01.2022

DATE OF DECISION: 18.01.2022

Order:

This appeal is filed against the impugned of Order-in-Appeal No. 239/2019 (CTA-II) dated 31.08.2019 passed by the Commissioner of G.S.T. and Central Excise (Appeals-II), Chennai, wherein the First Appellate Authority has upheld the denial of CENVAT Credit for the reasons assigned therein.

2. Heard Ms. Radhika Chandrasekhar, Learned Advocate for the appellant and Ms. Sridevi Taritla, Learned Additional Commissioner (Authorized Representative) for the Revenue.

3. I have considered the rival contentions and gone through the relevant documents/case-laws relied upon during the course of arguments.

4. The appellant made a refund claim under Rule 5 of the CENVAT Credit Rules, 2004 for Rs.43,09,632/-, being the unutilized CENVAT Credit of the Service Tax paid on input services used in providing output services, which were exported. The matter was taken up for adjudication and vide Order-in-Original No. 33/2019 (R) dated 29.03.2019, the Adjudicating Authority sanctioned the refund to the extent of Rs.36,91,417/-, while rejecting the balance claim as ineligible CENVAT Credit insofar as the claim of the appellant related to the Service Tax paid on Air Travel Agent Service, Car Parking Service, Hotel Service, Foreign Exchange Service, Rent-a-cab Service, Construction Service and Event Management Service. The Adjudicating Authority also noted that there was a difference between the amounts shown in the ST-3 returns and Form-A and that certain amounts were not debited as Education Cess and Secondary Education Cess account for the purpose of refund and also for the reason that there was mismatch in the invoices which pertained to the Pune address. On first appeal against that portion of the refund which was rejected, the appellant approached the First Appellate Authority, who vide impugned order has rejected the same, against which the present appeal is filed.

5. In the above factual background, I find that in the appellant's own cases, as submitted by the Learned Advocate for the appellant, this Bench of the Tribunal vide Final Order No. 41538 of 2016 dated 09.09.2016 in Service Tax Appeal No. 42537 of 2015 and Final Order No. 40484 of 2020 dated 19.01.2020 in Service Tax

Appeal No. 40481 of 2019, has considered the eligibility of the appellant and allowed the CENVAT Credit on:

- Cleaning Service
- Air Travel Agent Services
- Car Parking Service
- Banking and other Financial Services
- Interior Decorator Service
- Business Support Service
- Event Management Service
- Tour Operator Service
- Foreign Exchange Service (Forex purchase)
- Renting of Immovable Property Service

To this extent, therefore, the rejection of refund cannot sustain.

6. In respect of Hotel Services, however, I find that this Bench in the earlier order had remanded the matter for fresh consideration. Both the representatives submit that they have no objection in remanding this issue for re-consideration as well.

7.1 In view of the above, the denial of CENVAT Credit on the impugned services relating to:

1. Air Travel Agent Service
2. Car Parking Service
3. Event Management Service
4. Rent-a-cab Service and
5. Foreign Exchange Service

is required to be allowed since the denial is held to be incorrect. To this extent, therefore, the impugned order is set aside and the claim of the appellant is directed to be allowed.

7.2 Insofar as the issue of rejection of refund of CENVAT Credit on Hotel Services, I find that this Bench in the earlier Order had remanded the issue for fresh consideration to the file of the Adjudicating Authority and hence, the same is required to be followed here as well. This issue, therefore, is allowed by way of remand.

7.3 With regard to Construction Service, I do not find any supporting evidences other than a mere statement that the said service is not for the construction of a building or civil structure. In the absence of documents in support in this regard to say that the construction involved only repairs and maintenance or bringing up temporary structures, I am of the view that this matter also requires to be looked into again by the Adjudicating Authority. This issue is also, therefore, allowed by way of remand to the file of the Adjudicating Authority, however, with a direction to the appellant to offer all relevant documents in support of its claim.

7.4 Insofar as the denial of refund an amount of Rs.1,10,742/-, being not debited from the Education and Secondary Education Cess account, the same is also to be looked into afresh, which appears to be a procedural error. This issue is also, therefore, remanded to the file of the Adjudicating Authority.

7.5 Insofar as the denial of refund of an amount of Rs.1,41,073/-, which is on account of the difference between the amounts shown in the ST-3 returns and Form-A, Learned Advocate for the appellant would submit that they had filed all necessary documentary evidences reflecting the payments which were under reverse charge mechanism. It appears that the authorities below have not verified those documents before passing the orders. I am therefore of the opinion that even this issue requires re-adjudication. Hence, the denial of refund on this issue is set aside and the matter is remanded to the file of the Adjudicating Authority, before whom the appellant shall once again furnish all supporting documents for enabling the Adjudicating Authority to pass a speaking order.

8. The appeal stands partly allowed and partly remanded, as indicated above.

(Operative part of the order was pronounced in open court)

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)

Sdd