IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

REGIONAL BENCH - COURT NO. – III

Service Tax Appeal Nos. 41421 and 41422 of 2019

(Arising out of Order-in-Appeal No. 85 & 86/2019 (CTA-II) dated 29.4.2019 passed by the Commissioner of GST & Central Excise (Appeals – II), Chennai)

M/s. Sagitee Solutions Pvt. Ltd. **Appellant**
Module 1105, 11th Floor, TIDEL Park
North D Block No.4, Rajiv Gandhi Salai
Taramani, Chennai – 600 113.

Vs.

Commissioner of GST & Central Excise Respondent
Chennai South Commissionerate
MHU Complex, 692, Anna Salai
Nandanam, Chennai – 600 035.

APPEARANCE:

Shri C.S. Saravanan, Advocate for the Appellant
Shri M.Jagan Babu, AC (AR) for the Respondent

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

Final Order Nos. **41260-41261 / 2019**

Date of Hearing: 05.11.2019
Date of Decision: 05.11.2019

Both the appeals arise out of a common impugned order, they are taken up together for disposal.

2. Brief facts are that the appellants who are engaged in providing information software technology services filed refund claim under Rule 5 of CENVAT Credit Rules r/w Notification No.27/2012 dated 18.6.2012 for refund of service tax paid on various input services used by them for providing the taxable output service

exported from India. After due process of law, the original authority sanctioned part of the refund claims and disallowed refund in respect of certain services. Being aggrieved by the partial rejection of refund claim, they filed appeal before Commissioner (Appeals) who rejected the refund claim in respect of four services namely (i) maintenance charges in relation to renting of immovable property with respect to reimbursement of electricity charges, (ii) maintenance charges relating to service tax paid on car parking charges, (iii) meals and food vouchers provided for staff and (iv) hotel room charges for staff. Hence this appeal.

3. On behalf of the appellant, ld. counsel Shri C.S. Saravanan appeared and argued the matter. He submitted that with effect from 2015, section 67 has been amended and the reimbursable expenses are to be included in the total taxable value for discharging the service tax. The service provider namely TIDEL Park from whom the appellants have rented the premises has provided various maintenance services, invoices were raised for collecting such maintenance charges, this included reimbursement of electricity charges as well as car parking charges. The service tax paid on electricity charges have been denied by the authorities below alleging that the invoices are in the name of the main owner M/s. TIDEL Park. The car parking charges have been denied stating that the same are availed for personal consumption of employees. He submitted that electricity charges being part of the maintenance charges, the invoices were raised in the name of the land owner M/s. TIDEL Park for the reason that the electricity connection stands in the name of M/s. TIDEL Park. The charges have been collected from the appellant

by way of reimbursement. Therefore, the service tax paid on such charges is eligible for the credit as well as refund. With regard to parking charges, he submitted that it is necessary to give facility of parking to the employees as well as to customers who come to the office of the appellant. The same cannot be considered as personal consumption. With regard to service tax paid on meals / food vouchers given for staff as well as hotel room charges incurred for staff, he submitted that these were services provided for the employees as they were working 24 x 7 and also as they had to stay at the branch office to attend business meetings. He prayed that the refund may be sanctioned.

4. The ld. AR shri M. Jagan Babu supported the findings in the impugned order. He argued that the services in the nature of parking facility, catering service and hotel services are availed for personal consumption of the employees and therefore the authorities below have rightly rejected the same.

5. Heard both sides.

6. The maintenance charges in the nature of electricity charges has been collected from the appellant on which service tax has also been paid. After 2015 such charges by way of reimbursable expenses is included in the total taxable value. The authorities below have denied the refund alleging that the invoices of the electricity charges are in the name of the land owner M/s. TIDEL Park. Since the consumer number and the electricity connection are in the name of TIDEL Park, the charges have been paid in such a way. This cannot be a ground for rejecting the credit. I am of the opinion that the service tax paid on reimbursable of electricity charges is eligible for

credit / refund. So also the parking facility is given to the employees and customers for reaching the office. In the case of Verisign Services India Pvt. Ltd. Vs. Commissioner of Service Tax, Bangalore – 2018 (12) GSTL 161 (Tri. Bang.), it was held that the parking charges are eligible for credit. Following the same, I am of the view that disallowance of credit / refund is unjustified.

7. With regard to catering services in the nature of meals / food vouchers provided to the staff as well as hotel room charges provided to the staff, it can be seen that these are used by the employees for personal consumption. Hence it is excluded from the definition of input service and is not eligible for credit. The disallowance of credit / refund on these two services is therefore upheld.

8. After appreciating the facts as well as the submissions made, I am of the view that the appellant is eligible for refund in respect of service tax paid on reimbursement of electricity charges and service tax paid on car parking charges. The impugned order is modified to the above extent. The appeal is partly allowed in the above terms with consequential relief, if any.

(Dictated and pronounced in open court)

(**SULEKHA BEEVI C.S.**)
Member (Judicial)

Rex