# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

## NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

**Service Tax Appeal No. 50908 of 2018 [SM]**

[Arising out of Order-in-Appeal No. 479 (SM) ST/JPR/2017 dated 14.12.2017 passed by the Commissioner of Central Excise & Central Goods and Service Tax (Appeals), Jaipur]

**M/s. ITC Limited** **...Appellant**
(Unit: Sheraton Rajputana Hotel)
Palace Road, Jaipur,
Rajasthan

*VERSUS*

**Commissioner of Central Excise and Customs, Central Goods and Service Tax, Jaipur I** **...Respondent**
NCR Building, Statue Circle,
C-Scheme, Jaipur,
Rajasthan - 302005

**APPEARANCE:**
Shri Pranav Bansal and Shri Rahul Sateeja, Advocates for the Appellant
Shri V.J. Saharan, Authorized Representative for the Respondent

**CORAM: HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)**

DATE OF HEARING: 17.01.2024
DATE OF DECISION: 17.01.2024

**FINAL ORDER No. 55127/2024**

**DR. RACHNA GUPTA**

The appellant M/s. ITC Limited, Jaipur is engaged in rendering various taxable services. During the course of scrutiny of their ST-3 Returns for the period of 01.10.2010 to 31.03.2011, the department observed that in respect of rendering Mandap Keeper Service and Outdoor Catering Service, the appellant has availed the benefit of abatement under Notification No. 01/2006-ST dated 01.03.2006. The department formed an opinion that the appellant was not entitled to avail the said abatement for want of non-compliance of the conditions of the said notification. Accordingly, proposed the recovery of Cenvat credit on the input services availed by the appellant to an amount of Rs.1,45,27,848/-. The amount was proposed to be reversed along with the proportionate interest and appropriate penalties were also proposed to be imposed. The said proposal was initially confirmed vide Order-in-Original No. 141/2013 dated 29.08.2013, however, for the demand of service tax amounting to Rs.14,96,368/- along with the interest of the same amount and penalty to the maximum of the same amount. The appeal against the said order has been rejected vide Order-in-Appeal No. 479/2017 dated 14.12.2017. Being aggrieved, the appellant is before this Tribunal.

2. I have heard Shri Pranav Bansal and Shri Rahul Sateeja, learned Advocates for the appellant and Shri V.J. Saharan, Authorized Representative for the department.

3. Learned counsel has relied upon the previous decision in appellant's own case vide Final Order No. 52508-52509/2018 dated 03.07.2018 in Appeal No. ST/53034 & 54471/2014, wherein the still earlier decision in another appeal of appellant's themselves bearing Appeal No. ST/1318/2010 decided on 20.03.2018 was relied upon. It is mentioned that though the certificate of Chartered Accountant is placed on record as was directed by this Bench vide order dated 18.08.2023, however, since the aforesaid decisions have remanded back the matter, learned counsel has prayed for the present appeal also to be remanded back for the fresh adjudication by the authorities below. It is impressed upon that the Chartered Accountant Certificate is clear enough to endorse

that for the period in question the appellant has discharged their service tax liability in cash for Mandap Keeper Services and Outdoor Catering Services and thus have rightly claimed the abatement benefit of Notification No.01/2006-ST dated 01.03.2006. Learned counsel has accordingly prayed for the appeal to be allowed by way of remand.

4. Learned Departmental Representative while acknowledging that previous appeals of the appellant themselves arising out of same issue have already been remanded back to the original adjudicating authority, however, has brought to the notice the findings of Commissioner (Appeals) in Para 6 of the order under challenge. It is impressed upon that the Commissioner (Appeals) has taken due note of the Chartered Accountant Certificate in the previous appeals also and the certificate was issued by the same Chartered Accountant as has been issued in the present case. Learned DR has impressed upon that there is no infirmity in the findings in the order under challenge where it has been held that the appellant has not complied with the conditions of Notification No. 01/2006-ST and as such is not entitled for the abatement given under the said notification. Learned Departmental Representative has brought to the notice that appellants have already made the payment of entire demand due to wrong availment of the abatement benefit of the impugned notification. The payment was made on 17.11.2015 i.e. after the original adjudicating authority had confirmed the said demand. With these submissions, appeal in hand is prayed to be dismissed.

5. In rebuttal, learned counsel has mentioned that the said payment may be treated as payment under protest as the same was paid simply to avoid the interest liability upon the payment in case the demand at all gets confirmed. With these submissions, the appeal is prayed to be allowed.

6. Having heard the submissions of both the parties.

7. I observe that issue involved in the present case is the denial of benefit of abatement under Notification No. No.01/2006-ST dated 01.03.2006. The perusal of the said notification as annexed on record shows that the specific services as mentioned at S.No. 1 to 10 in the said notification were held exempted from so much of service tax leviable thereon under Section 66 of the Finance Act, as in an excess of service tax calculated on the value which is equivalent to the percentage specified in the corresponding entry in column (5) of the table in the said notification. The perusal shows that Mandap Keeper Service is reflected at S.No. 1 and the Outdoor Catering Service is reflected at S.No. 8 of the said notification. The corresponding entry in column (5) for both these entries revealed that 40% abatement is available in case of Mandap Keeper Service and 50% abatement is available in case of Outdoor Catering Service, however, subject to following two conditions:

(i) the CENVAT credit of duty on inputs or capital goods or the CENVAT credit of service tax on input services, used for providing such taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004; or

(ii) the service provider has availed the benefit under the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.12/2003-Service Tax, dated the 20th June, 2003 [G.S.R. 503 (E), dated the 20the June, 2003].

8. From Para 6 of the order under challenge as impressed upon by learned Departmental Representative, it is observed that in the present case as well as in previous such cases, the scope of word 'such' used in the condition at S.No. (i) as above, has been elaborated. However, keeping in view that these findings have already been remanded back for the fresh adjudication in the light of the certificate of the Chartered Accountant submitted on record. The certificate has been produced in this case before this Bench. It is apparent on record that in addition to the two services in question, appellants are admittedly engaged in various other taxable services. Though five input services have been mentioned in Para 3 of the Chartered Accountant Certificate as placed on record with the endorsement that the Cenvat credit for providing output services of Mandap Keeper Service and Outdoor Catering Service has not been availed. However, to my opinion, the certificate is absolutely silent as to whether the five of the input services as mentioned in the certificate are/are not the common input services for the Mandap Keeper Service as well as for the Outdoor Catering Service. In the light of this opinion and that the same issue in appellant's own case for the previous period has already been remanded back to the adjudicating authority for de novo adjudication. It is held that the matter be sent back for fresh adjudication.

9. In the light of the above discussion, appellant is directed to produce entire relevant evidence to show that five of the input services as mentioned in the Chartered Accountant certificate were not the common input services for Mandap Keeper Service and Outdoor Catering Service. The adjudicating authority is directed to take de novo adjudication after taking into consideration the Chartered Accountant Certificate and the documents as shall be produced pursuant to the above direction given to the appellant. With these observations, the matter is remanded back. Appeal stands allowed by way of remand.

[Dictated and pronounced in the open Court]

**(DR. RACHNA GUPTA)**
**MEMBER (JUDICIAL)**

*HK*