IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing/Order: 10.7.2017

Appeal No. ST/50382-50383/2014-CU(DB)

(Arising out of Order-in-Appeal No. 243-246(OPD)ST/JPR-II/2013 dated 30.8.2013 passed by the Commissioner (Appeals), Central Excise, Jaipur-II)

M/s Marudhar Hotels Pvt. Ltd. Appellant

Vs.

CCE & ST, Jaipur-II Respondent

Appearance

Shri Pradeep Jain, C.A. - for the appellant

Shri Sanjay Jain, D.R. - for the respondent

CORAM: **Hon'ble Mr. S.K. Mohanty, Member (Judicial)**
Hon'ble Mr. Ashok K. Arya, Member (Technical)

Final Order No. 55121-55122/2017

Per S.K. Mohanty:

The issue involved in these appeals are identical. Accordingly, the same are taken up for hearing together and a common order is being passed.

2. Taking of Cenvat credit used for providing the output services as well as services relating to trading activity is subject matter of present case. The authorities below have denied the Cenvat credit on the ground that the services used for trading activity will not be

eligible for Cenvat credit in terms of Rule 3 of the Cenvat Credit Rules, 2004.

3. The ld. Advocate appearing for the appellant submits that the period involved in these cases is from October, 2007 to March, 2010 and there was no specific definition provided in the Cenvat statute with regard to exempted service. Thus, denial of Cenvat credit on the input services used in the trading activity is not in conformity with the statutory provisions. To support such stand, the ld. Consultant has relied the decision of this Tribunal in the cases of ***Marudhan Motors Vs. CCE & ST, Jaipur- I*** – 2017 (47) STR 261 (Tri.-Del.), ***Tricity Auto Vs. CCE, Chandigarh-II –*** 2016 (44) STR 601 (Tri.-Chand.) and ***Kundan Cars Pvt. Ltd. Vs. CCE, Pune*** – 2016 (43) STR 530 (Tri.-Mumbai).

4. On the other hand, ld. DR appearing for the respondent reiterates the findings recorded in the impugned order and further submits that the appellant is only entitled to take Cenvat credit on the input services used in providing the output service. Since trading is not an output service for the appellant, there was no question of taking any Cenvat credit and such Cenvat credit having been taken by the appellant, the adjudged demand confirmed by the authorities below are proper and justified.

5. Heard both the sides and perused the case record.

6. Rule 3 of the Cenvat Credit Rules, 2004 is the enabling provision, which entitles a service provider to take Cenvat credit on the input services for use in providing the output service. Since trading activity was not a defined service under the Cenvat statute, there was no scope or occasion for taking any Cenvat credit on the input services used for providing such trading service. Thus, confirmation of adjudged demand in this case is sustainable under the law. The above referred decisions cited by the ld. Consultant for the appellant are distinguishable from the facts of the present case inasmuch as the issue decided therein relates to applicability of Rule 6 of Cenvat Credit Rules and not in context with taking of Cenvat credit on input services used in providing trading activities.

7. Therefore, we do not find any infirmity in the impugned order passed by the ld. Commissioner (Appeals). Accordingly, we dismiss the appeals filed by the appellants.

(Dictated & pronounced in open Court)

(Ashok K. Arya) Member (Technical)	(S.K. Mohanty) Member (Judicial)

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