CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing/decision: 05.01.2018

Appeal No. ST/56675-56676/2013- [DB]
ST/50575/2014

[Arising out of the Order-in-Original No.23-24-STAX-D-I/2013 Dated 08/01/2013 & 46-STAX-D-I-2013 Dated 23/10/2013 passed by the Commissioner of Central Excise-DELHI - I(Appeal).]

Select Infrastructure Pvt. Ltd. … Appellant

Vs.

CCE Delhi-I …Respondent

Appearance:
Present Shri A.K. Batra, CA for the appellant
Present Shri Ranjan Khanna, AR for the respondent

Coram: Hon'ble Justice Dr. Satish Chandra, President
Hon'ble Mr. B. Ravichandran, Member (Technical)

FINAL ORDER No. 50072-50074/2018

Per B.Ravichandran

1. All the three appeals are on identical dispute and are accordingly taken up together.

2. The appellant is the owner of a shopping mall and are registered with the Service Tax department and discharging Service Tax in various categories. The dispute in the present appeal is with reference to two issues.

   a. The liability of the appellant to pay Service Tax under the category of Renting to Immovable Property Service with reference to parking fees collected from various persons who used the premise of the appellant to park vehicles.

   b. The second issue is with reference to eligibility of Cenvat Credit on banking and other financial services availed by the appellant during the course of raising finance for the construction of the mall which is further used by the appellant for business or commerce. The lower Authority held that the appellant is liable to pay Service Tax on all the consideration received under the category of parking fee as the same will fall under the taxable entry of renting of immovable property service. The Ld. Consultant appearing for the appellant contested the said finding stating that mostly the parking fee is collected from visitors of the mall and it cannot be said the appellant is promoting business or commerce of the visitors. Hence, he pleaded for the fee collected for visitors no Service Tax can be demanded. However, he submitted that they do collect, on monthly basis, certain parking charges from the owners/employees of the shops, who rented the shops in the mall. He is not pressing against the said portion of the demand. On the second issue he submitted that finance raised for of the creation of the commercial mall is rightly eligible as credit to the appellant. The mall is used for providing taxable services on which they are paying Service Tax. As such the said DOFS is directly attributable to the final output service on which tax is being discharged.

3. The Ld. AR reiterated the findings of the lower Authority and submitted that the finance raised is with reference to creation of immovable property and cannot be considered as taxable output service.

4. We have heard both sides and perused the appeal records.

5. Regarding the parking income, we note that while parking fee collected from the owners or employees of the shop who are in business or commerce are rightly covered under renting of immovable property service, such fee collected from the individual casual visitors of the mall cannot be covered under such category. We note that the statutory tax entry for renting of immovable property service under heading 65(105) (zzzz) of the Finance Act, 1994 stipulates the immovable property should be used in the course of furtherance of business or commerce. The parking facility availed by various visitors to the mall is not in furtherance of any business or commerce as the other party is not involved in any such activity. However, the owners of the shop/ and their employees are availing the parking facility for which monthly consideration is collected by the appellant along with the rent payable for the said shops and premises. This will assume the nature of renting of immovable property in furtherance of business or commerce. Accordingly, the consideration attributable to such income is liable to be taxed.

6. On the issue regarding Cenvat Credit availed on banking and other financial services, we are in agreement to the appellant that the finance arrangement is attributable to the appellant's creation of the mall which are regularly used for providing taxable output service. Such finance is with reference to the business of the appellant and will be covered as input service. In this connection, we rely upon the following decisions of the Tribunal.

(i) ***M/s Vikhroli Corporate Park Vs Commissioner of Service Tax, Mumbai-II dated 02.12.2016 cited as 2016-TIOL-3265-CESTAT-MUM.***

(ii) ***M/s Vamona Developers Pvt Ltd Vs CC CE & ST, Pune-III dated 02.12.2015 cited as 2015-TIOL-2705-CESTAT-MUM.***

(iii) ***Maharashtra Cricket Association V/s Commissioner of Central Excise, Pune-III dated 29.10.2015 cited as 2015-TIOL-2418-CESTAT-MUM.***

(iv) ***Navaratna S.G. Highway Prop. Pvt. Ltd. dated 08.12.2011 cited as 2012 (28) S.T.R. 166 (Tri-Ahmd.)***

(v) ***Bellsonica Auto Component India Pvt. Ltd. dated 28.11.2013 cited as 2016 (46) S.T.R. 377 (tri.-Del.)***

(vi) ***Oberoi Mall Ltd. Vs CST, Mumbai-II dated 17.02.2016 cited as 2016-TOIL-704-CESTAT-MUM***

7. The Ld. Consultant pleaded against the imposition of penalties. We note that the tax entry of renting of immovable property service has been subject matter of substantial litigation. There were significant amendments in the tax entry itself including retrospective amendments, in pursuance of the decision of Hon'ble Delhi High Court in ***Home Solution Retail India Ltd. 2009 (237) ELT 209 (Del)***. Accordingly, we hold that there was reasonable cause for non-payment of tax on a part of parking fees. Considering the said situation we find that the penalty imposed on the appellant can be waived by invoking provisions of Section 80. We order accordingly.

8. In view of the above discussions and analyses we uphold the Service Tax liability on parking facility provided to the shop owners/ employees. The Service Tax liability on the parking fees of the visitors cannot be sustained. The credit claimed by the appellant on BoFS is eligible. Penalties are waived.

9. The appeals are disposed on in above terms.

[Order dictated and pronounced in the open court]

(Justice Dr. Satish Chandra)
President

(B. Ravichandran)
Member (Technical)

Rekha