CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

<u>BENCH-DB</u>

<u>COURT –IV</u>

<u>Service Tax Appeal No.ST/51361/2014-ST [DB]</u>

[Arising out of Order-in-Original No.JAI-EXCUS-001-COM-088-13-14 dated 29.11.2013 passed by the Commissioner (Appeals), Customs, Central Excise and Service Tax, Jaipur]

Maharaja Sawal …Appellant

Vs.

C.C.E. & S.T., Jaipuyr-I … Respondent

Present for the Appellant : Ms. Rinki Arora, Advocate
Present for the Respondent: Mr.R.K. Maji, D.R.

Coram: HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. V.PADMANABHAN, MEMBER (TECHNICAL)

Date of Hearing/Decision: 09.03.2018

FINAL ORDER NO. 51111/2018

PER: S.K. MOHANTY

This appeal is directed against the impugned order dated 05.12.2013 passed by the Commissioner of Central Excise and Service Tax, Jaipur.

2. Brief facts of the case are that the appellant is engaged in providing the services under the taxable category of mandap keeper service and renting of immovable property service. For the said purpose, the appellant is registered with the Service

Tax Department. Upon scrutiny of the records maintained by the appellant, the Department observed that the appellant has short paid Service Tax on account of renting of immovable property. It has been contended by Revenue that renting of immovable property is not a service and thus, security agency service cannot be considered as input service for the purpose of availment of Cenvat benefit. Further, the Department observed that the appellant had wrongly availed the benefit of Notification No.24/2007-ST dated 22.05.2007, inasmuch as, no documentary evidences were produced to show the actual property tax paid by the appellant for letting out the properties. Further, the Department also contended that the benefit of exemption provided under Notification No.6/2005-ST dated 01.03.2005 is not available to the appellant. Accordingly, after initiation of show cause proceedings, the matter was adjudicated against the appellant, wherein the adjudged demands were confirmed.

3. The ld. Advocate appearing for the appellant submits that the Legislature has recognized renting of immovable property as the service, leviable to Service Tax under the Finance Act, 1994. Since such service is a taxable service recognized under the law for levy of service tax, the input service used/utilized by the appellant for such output service should be considered as input service as per the definition contained in Rule 2 (l) of the Cenvat Credit Rules, 2004 and the Service Tax paid thereon should be available as Cenvat Credit. Thus, she submits that Service Tax paid on the security agency service should be available for Cenvat credit to

the appellant. With regard to availment of the benefit of Notification No.24/2007-ST dated 22.05.2007, the ld. Advocate submits that the property tax paid by it, was deducted from the gross value and on the net value of service, the Service Tax liability was discharged. Thus, it is her contention that the Service Tax demand cannot be confirmed on the property tax paid by the appellant in terms of Notification dated 22.05.2007. With regard to availment of the benefit of Notification dated 01.03.2005, she submits that the appellant is not pressing for the demand confirmed in the adjudication order.

4. On the other hand, the ld. DR appearing for the Revenue reiterates the findings recorded in the impugned order and further submits that since renting of immovable property is not a service, service tax paid on security agency service should not be available as Cenvat credit to the appellant. To support such stand, he has relied on the Circular No.98/1/2008-ST, dated 04.04.2008 issued by the TRU, New Delhi. Further, he also submits that in respect of the benefit of Notification dated 22.05.2007, the appellant had not produced any documentary evidence before the original authority. Thus, Service Tax demand on that ground is maintainable.

5. Heard both sides and perused the case records.

6. It is an admitted fact on record that renting of immovable property is categorize as a taxable service under Section 65 (105) (zzzz) of the Finance Act, 1994. For providing such taxable service, the appellant had availed the

services of the security agency service. Since such service was in relation to providing the taxable output service, service tax paid on such service should be available as Cenvat credit to the appellant in terms of Rule (2) (l) of the Rules. We find that this Tribunal in the case of Maharashtra Cricket Association vs. Commissioner of Central Excise, Pune-III – 2016 (41) S.T.R. 833 (Tri.- Mum.) has held that the Circular issued by the TRU is ambiguous and is not confirming to the definition of input service. Thus, we are of the view that the Circular relied on by the Department cannot be acted upon for deciding the issue differently. Therefore, we are of the view that denial of Cenvat credit of Service Tax paid on security agency service is not proper and justified. Accordingly, it is held that the appellant should be entitled to the cenvat benefit of service tax paid on the security agency service.

7. With regard to availment of the benefit of Notification No.24/2007-ST dated 22.05.2007, we find that the appellant had not produced the documentary evidences before the original authority and therefore, without extending the benefit, the adjudication order has confirmed the Service Tax demand on the appellant. Since the onus entirely lies with the appellant to prove entitlement of its claim for the benefit provided under Notification dated 22.05.2007, we are of the view that demand confirmed by the original authority is not improper. However considering the submission of the appellant that it can produce the documents before the original authority to show that property tax has been paid and the same should be entitled for abatement, we are of the view that

the matter should go back to the original authority for verification of such documents. Therefore, we remand the matter to the original authority for verification of the records/ documents for ascertaining the fact, whether property tax has been paid by the appellant and whether same should be eligible for abatement in terms of the Notification dated 22.5.2007.

8. As regards the benefit of exemption Notification No.6/05-ST dated 01.03.2005, the appellant is not pressing for such demand and accordingly, we upheld the adjudication order, so far as it denied the benefit of the said Notification.

9. The appeal filed by the appellant is disposed of in above terms.

[Dictated and pronounced in the open Court)

(V.PADMANABHAN) **MEMBER (TECHNICAL)**	**(S.K. MOHANTY)** **MEMBER (JUDICIAL)**

Anita