CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD

Division Bench
Court - I

Appeal No.	Appellant	Respondent	Impugned Order
ST/2097/2010	Mack Soft Tech Pvt Ltd	CCCE & ST, Hyderabad - IV	OIO: 1/2010-ST-Commr. dated 28.04.2010 passed by CCCE & ST, Hyd-IV
ST/120/2012			OIO: 30/2011-Adjn-Commr-ST dated 30.09.2011 passed by CCCE & ST, Hyd-IV
ST/203/2012			OIO: 35/2011-Adjn-Commr-ST dated 24.10.2011 passed by CCCE & ST, Hyd-IV
ST/26950/2013			OIO: 15/2013-Adjn-Commr-ST dated 22.03.2013 passed by CCCE & ST, Hyd-IV

Appearance
Shri S. Thirumala, Advocate for the Appellant.
Shri Arun Kumar, Dy. Commissioner/AR for the Respondent.

Coram:

HON'BLE Mr. M.V.Ravindran, MEMBER (JUDICIAL)

HON'BLE Mr. P. Venkata Subba Rao, MEMBER (TECHNICAL)

Date of Hearing: 05.10.2018
Date of Decision: 05.10.2018

FINAL ORDER No. A/31314-31317/2018

[Order per: M.V.Ravindran.]

1. Since all the 4 appeals are in respect of the same assessee and issue involved being the same, all the appeals are disposed of by common order.

2. Heard both sides and perused the records.

3. During the period in question, appellant herein had availed Cenvat Credit on service tax paid on input services while constructing an IT park. Appellant, after construction of such IT park had rented out the premises to various Information Technology companies. Holding a belief that they are eligible for availment of Cenvat Credit on various input services which were utilized for construction of such IT park, they availed Cenvat Credit which the department had contested in the show cause notices issued to the

appellant. Show cause notice directed the appellant to show cause as to why the Cenvat credit be not denied on services as they were in respect of construction of IT park which is an immovable property. Reliance was placed on Circular No.98/1/2008-ST for such details. Appellant contested the matter on merits before the adjudicating authority claiming that they are rendering taxable output services in the form of renting of immovable properties and in order to render such taxable output services they had availed input services for construction of IT Park. Hence the Cenvat credit availed by them is well within the law. The adjudicating authority after following due process of law did not accept the contentions raised by the appellant and confirmed the demands with interest and also imposed penalties.

4. Learned counsel after taking us through the entire case records, submits that the issue is now squarely settled by the decision of the Hon'ble High Court of Andhra Pradesh in the case of CCE, Visakhapatnam Vs Sai Samhita Storages Pvt Ltd [2011 (270) ELT 33 (AP)] and Navaratna SG Highway Prop Pvt Ltd Vs CST, Ahmedabad [2012 (28) STR 166] and Lemon Tree Hotels Vs CCE & ST, Aurangabad [2018 VIL 321 (CESTAT-Mumbai)]. It is his further submission that one more issue in the first appeal is regarding allegation that appellant had availed Cenvat Credit of the services rendered prior to the registration of their output services with the authorities, for which he submits that various decisions and one of them, Vamona Developers Pvt Ltd Vs CCCE & ST, Pune-III [2016 (42) STR 277] had held that service tax credit cannot be denied only on the ground that registration was obtained subsequent to the receipt of services.

5. Learned departmental representative reiterates the findings of the lower authorities and submits that Circular No.98/1/2008-ST dated

04.01.2008 was followed by the lower authorities; that in the case of Sai Samhita Storage Pvt Ltd (supra) the Cenvat Credit was availed on the inputs and not input services.

6. On careful consideration of the submissions made by the both sides, we find that the Cenvat Credit is sought to be denied to the appellant on the following services as also various other services.

Sl. No.	Category of Service
1.	Business Support Services
2.	Chartered Accountants Services
3.	Commercial or Industrial Construction Services
4.	Custom House Agent Services
5.	Event Management Services
6.	Information Technology Software Services
7.	Legal Services
8.	Management and Business Consultancy Services
9.	Management Maintenance or Repair Services
10.	Real Estate Agent's Services
11.	Telecommunications Telephone Services

7. It is noticed and it remains undisputed that appellant is rendering taxable output service in the form of renting of immovable property services and the facility was created by utilizing various services (as listed above) rendered by service providers and also various other services.

8. We find that similar issue came up before the Tribunal in the case of Navaratna SG Highway Prop Pvt Ltd (supra) wherein the bench after considering all the issues, along with the definition of input services and inputs, in Para 3.2, held as under.

> *"**3.2.** The definition of 'inputs' is limited to the definition of 'input services' as can be seen from the definition given above. Credit of duty paid on inputs is available when the inputs are used for providing an 'output service'. Therefore, there is a need to say that the inputs have been used for providing an 'output service'. In the case of 'input service', the definition includes input services used by a provider of taxable service for providing an output service. Therefore the definition of input and input service are pari materia as far as the service providers are concerned. That being the position, the decision of the Hon'ble High Court of Andhra Pradesh would be applicable to the present case. In that case also, the Hon'ble High Court took the view that without use of cement and TMT bars for construction of warehouse assessee could not have provided 'storage and warehousing service'. In this case also, without utilizing the service, mall could not have been constructed and therefore the renting of immovable property would not have been possible. The issue involved is squarely covered by the*

> *decision of the Hon'ble High Court of Andhra Pradesh. Since the service tax demand itself is not sustainable, the question of imposition of penalty does not arise. The appeal is allowed with consequential relief to the appellants."*

9. The above said view of the Tribunal was held by the Hon'ble High Court of Gujarat in the case of Mundra Ports and Special Economic Zone Ltd Vs CCE & C [2015 (39) STR 726] wherein the Lordships have held that any input services used for erecting facility, service tax credit cannot be denied on such input services. Further, we find that same view has been expressed by this Bench in the case of Lemon Tree Hotels [2018 VIL 321 CESTAT-Mumbai]. In view of the foregoing, we hold that impugned orders are unsustainable and liable to be set aside and we do so.

10. The impugned orders are set aside and the appeals are allowed.

(Dictated and pronounced in the open Court)

(P.VENKATA SUBBA RAO) MEMBER (TECHNICAL)	(M.V. RAVINDRAN) MEMBER (JUDICIAL)

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