IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI

APPEAL NO: ST/86187/2015

[Arising out of Order-in-Original No: 04/ST/COMMR/2015 dated 18/02/2015 passed by the Commissioner of Central Excise, Customs & Service Tax, Aurangabad.]

Lemon Tree Hotels Ltd …***Appellant***

versus

Commissioner of Central Excise, Customs & Service Tax
Aurangabad ***…Respondent***

Appearance:

Shri Hanish S, Chartered Accountant for the appellant

Shri M Suresh, Dy. Commissioner (AR) for the respondent

CORAM:

Hon'ble Shri Ramesh Nair, Member (Judicial)
Hon'ble Shri C J Mathew, Member (Technical)

Date of hearing:	**07/03/2018**
Date of decision:	**03/04/2018**

ORDER NO: A/85880 / 2018

Per: Ramesh Nair

The issue involved is that whether the appellant being a hotel is entitled for CENVAT credit in respect of 'construction service' which was used for constructing additional rooms and repairing of some hotel rooms.

2. Shri Hanish S, Learned Chartered Accountant appearing on behalf of the appellant submits that they are engaged in providing of various services and paying service tax in respect of laundry and internet café which is part of the overall hotel business and the output service is provided as one of the hotel business which is run in the hotel building. Therefore, the construction service used for constructing rooms, hotel rooms and repairing thereof is an input service for providing overall hotel service. The credit is rightly admissible. He submits that as regards the other activity which are not taxable in the hotel, the same would not affect the eligibility of the CENVAT credit for the reason that in respect of construction service, under Rule 6(5) even if the construction service is used for providing taxable and non-taxable service the entire credit is admissible. He submits that in their own case this Tribunal has allowed CENVAT credit by the Chennai bench *vide* final order No. 43404/2017 dated 28/11/2017. He also placed reliance on the judgment in the case of *Prakruti Resorts Ltd v. Commissioner of Central Excise, Raigad*. 2014-TIOL-2087-CESTAT-MUM. He also referred to the Board's circular F.No. 137/203/2007-Cx.4 dated 01/10/2007.

3. On the other hand, Shri M. Suresh, Learned Dy. Commissioner (AR) appearing on behalf of Revenue reiterates the finding of the

impugned order. He submits that the appellant is paying service tax only in respect of few services, namely, 'rent-a-cab service', 'internet café', 'convention service', 'mandap keeper service', 'outdoor catering service', 'health and fitness service' and 'dry cleaning service'. However, these services have no nexus with the construction service which was exclusively used for non-taxable activity,. Accordingly, provisions of rule 6(5) of CENVAT Credit Rules 2004 shall not apply.

4. We have carefully considered the submissions made by both the sides and perused the records.

5. We find that the very facts of the case is that the appellant have availed CENVAT credit in respect of 'construction service' which is used for constructing additional rooms, renovation of the rooms in the hotel. They discharge service tax in respect of various services such as 'rent-a-cab service', 'internet café', 'convention service', 'mandap keeper service', 'outdoor catering service', 'health and fitness service' and 'dry cleaning service'.

6. The only issue is that whether CENVAT credit in respect of construction service is available in terms of Rule 6(5) of CENVAT Credit Rules, 2004. The contention of Revenue is that the output service has no nexus with the construction service. Therefore, construction service was exclusively used for non-taxable service.

Hence the credit in terms of Rule 6(5) is not available. We do not agree with the contention of Revenue for the reason that the overall hotel business is rendered within the common hotel building and the construction service received in respect of construction of any part of the hotel is a common input service which has nexus with overall hotel business. Therefore, even though some pat of the hotel business is not taxable, but it cannot be said that the construction service was used exclusively for non-taxable service. The hotel building is common for all taxable and non-taxable service. Therefore, the construction service is squarely covered under Rule 6(5) and credit is admissible.

7. In appellant's own case, the Chennai bench of this Tribunal, dealing with identical issue, observed that building constructed for the hotel is used for renting of the services of the hotel and accordingly CENVAT credit is admissible under Rule 6(5). Considering the Division Bench order of this Tribunal passed *vide* final order No. 43404/2017 dated 28/11/2017 the impugned order is not sustainable and the same is set aside.

8. The appeal is allowed.

(Pronounced in Court on 03/04/2018))

(C J Mathew) **(Ramesh Nair)**
Member (Technical) ***Member (Judicial)***
**/as07031503*