IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT No.

APPEAL Nos. ST/87379,87557/2018

(Arising out of Order-in-Appeal No. SM/CGST & CX/Bhiwandi/APP-28-29/17-18 dated 28.02.2018 passed by Commissioner of CGST & Central Excise (Appeals), Bhiwandi)

Platinum Guild India Pvt. Ltd. **Appellant**

Vs.

Commissioner of CGST, Mumbai West **Respondent**

Appearance:

Shri Mehul Jivani, Chartered Accountant, for appellant
Shri Sudhir B. Mane, Assistant Commissioner (AR), for respondent

CORAM:

Hon'ble Mr. S.K. Mohanty, Member (Judicial)

Date of Hearing: 26.02.2019
Date of Decision: 26.02.2019

ORDER No. A/85392-85393/2019

These appeals are directed against the impugned order dated 28.02.2018 passed by the Commissioner of CGST & Central Excise (Appeals), Bhiwandi.

2. Denial of cenvat benefit of service tax paid on the taxable services, viz., renting of immovable property, car parking and rent-a-cab service, is the subject matter of present dispute. The authorities below have denied cenvat benefit on the ground that the said services are not conforming to the definition of 'input service'

contained in Rule 2(l) of the Cenvat Credit Rules, 2004 for availment of Cenvat Credit of service tax paid therein.

3. Both sides agree that the learned Commissioner (Appeals) has rejected the appeal filed by the appellant, mainly on the ground that the copy of rent agreement was not provided by the appellant during the course of hearing. The learned consultant for the appellant also submits that the issue regarding eligibility of Cenvat Credit on the disputed services is no more res integra in view of the judicial pronouncements of different courts and Tribunal. He further submits that though the relied upon decisions were submitted before the learned Commissioner (Appeals), but the same were not considered in proper perspective and the impugned order was passed, in denying the cenvat benefit and rejecting the appeal filed by the appellant.

4. For ascertaining the issue of eligibility to Cenvat Credit, the assessee has to demonstrate that the disputed services are in fact, confirming to the definition of input service. For proper appreciation of the case, I am of the view that the rent agreements entered into between the appellant and the service providers are required to be examined at the original stage. Further, I also find that the appellant's claim that the disputed

services were used for accomplishing its business purpose and none of the disputed services were used for personal consumption or benefit of the employee, has not been properly addressed by the lower authorities inasmuch as no specific findings have been recorded in context with the eligibility for credit in terms of the amended definition of input service. Therefore, I am of the view that this issue is also required to be verified by the original authority for proper fact finding, whether the disputed services should be considered as input service or not. For the said purpose, the original authority should examine the authoritative decisions pronounced by judicial forum, which will be submitted by the appellant during the course of adjudication proceedings.

5. In view of above, after setting aside the impugned order, the appeals are allowed by way of remand to the original authority. It is made clear that the remand proceeding is only confined to the above mentioned three disputed services.

(Pronounced in court)

(S.K. Mohanty)
Member (Judicial)

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