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

APPEAL NO: ST/86683/2018

[Arising out of Order-in-Appeal No: V2(A) STII/403/2016-17 dated 31.01.2018 passed by the Commissioner of CGST & Central Excise, Belapur, Navi Mumbai]

Sun Area Real Estate Pvt. Ltd. ***Appellant***

versus

Commissioner of CGST, Mumbai West ***Respondent***

Appearance:

Shri Archit Agarwal, CA for appellant

Shri M P Damle, Assistant Commissioner (AR) for respondent

CORAM:

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

Date of hearing:	**30/10/2018**
Date of decision:	**30/10/2018**

ORDER NO: A/88412 / 2018

Per: S.K. Mohanty

Brief facts of the case are that the appellant is engaged in providing taxable service under the category of "Banking and Other Financial Services", as defined under the Finance Act, 1994. The appellant avails Cenvat Credit of service tax paid on the input services. During the disputed period, the appellant had provided investment advisory services to its associated company located in Mauritius. Since the output services were exported by the appellant, there was no scope for payment of service tax on such service. Accordingly, the appellant had filed the applications, claiming refund of service tax paid on the input services. The original Authority had denied the refund benefit in respect of the taxable service, holding that the service are not confirming to the definition of input service, as provided under Rule 2(l) of the Cenvat Credit Rules, 2004. On appeal against adjudication order, the Learned Commissioner (Appeals) vide the impugned order dated 31.01.2018 has partially allowed the refund benefit in respect of some of the input services and denied the benefit in respect of other services, by upholding the order passed by the original Authority. Feeling aggrieved with the impugned order, the appellant has preferred this appeal before the Tribunal.

2. The Learned consultant appearing for the appellant submits that Air Travel Agent Service has been used by the appellant for travelling of its employees/personnel for official work like, site visit, conducting interviews etc., and thus, such service is confirming to the definition of input service for the purpose of availment of Cenvat Credit. As regards Membership of Club or Association service, he submits that the fees toward such service has been paid by the appellant to confederation of Indian Industry (CII) and International Market

Assessment India Private Limited (IMA) for meeting the business requirement and since membership subscription fees were not paid by the appellant for providing the recreational facilities to its employees, such service is not falling under the exclusion clause provided in the definition of input service. With regard to rent-a-cab Service, he submits that such service was availed by the appellant for the period prior to April 2011 and thus, under the un-amended definition of input service (effective up to 31.03.2011), such service should be considered as input service for the purpose of availment of Cenvat benefit. As regards renting of immovable property service, he submits that whatever service tax paid by the service provider and claimed through the invoices, was taken as Cenvat Credit by the appellant. Thus, he submits that since service tax has been paid by the service provider and the same has been retained by the Revenue and no objections were raised by the authorities on the service provider, the allegation of non-leviability of service tax on such service cannot be raised at the recipient's end. With regard to the debit note issued by the service provider, he submits that the same note contained the particulars as provided under Rule 4 A of the Service Tax Rules, 1994.

3. On the other hand, the Learned AR appearing for the Revenue reiterates the findings recorded in the impugned order.

4. Heard both sides and perused the records.

5. With regard to the disputed services namely, air travel agent service, membership of club & association service and rent-a-cab service, the definition of input service takes within its scope and ambit those services for consideration as input service. Thus, under the Cenvat provisions, the appellant should be entitled for benefit of refund of service tax paid on such input services. The Department had denied the refund benefit on renting of immovable property service on the ground that the services availed by the appellant are related to the electricity charges incurred on the rented premises. Service provider providing the services to the appellant is registered with the Service Tax Department and paid the tax on such electricity charges under the taxable entry of renting of immovable property service. Since the department had not raised any objection on the service provider and accepted such tax as the appropriate tax due, the issue of levy of service tax on service cannot be questioned at the recipient's end inasmuch as the recipient of service is permitted to avail Cenvat credit of service tax paid on the taxable service by the service provider. Thus, denial of refund benefit on renting of immovable property service will not stand for judicial scrutiny. With regard to the debit notes issued by the service provider to the appellant, I find that the said note had contained the requisite particulars provided in Rule 4 (A) of Rules. Since payment of service

tax by the service provider and receipt of services by the appellant for providing the output service have not been specifically alleged by the Department, I am of the considered view that denial of refund benefit cannot be sustained on the ground that debit note is not a prescribed document for availment of Cenvat Credit.

6. In view of foregoing discussion and analysis, I do not find any merits in the impugned order, so far as it denied the refund benefit to the appellant. According, after setting aside the same, the appeal is allowed in favour of the appellant, with consequential benefit of refund.

(Pronounced & Dictated in Court)

(S.K. Mohanty)
Member (Judicial)

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