

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

REGIONAL BENCH – COURT NO.405

ST Appeal No. 87678 of 2018

(Arising out of Order-in-Appeal No.IM/CGST A-1/MUM/66/18-19 dated 23.05.2015
passed by the Commissioner (Appeals)-I CGST & Central Excise, Mumbai)

M/s Shoreline Hotels Pvt. Ltd.

.....Appellant

Hotel Marine Plaze, 29
Marine Drive, Mumbai

VERSUS

Commissioner (Appeals)-I, CGST & Central Excise, Mumbai South

.....Respondent

13th Floor Air India Building,
Nariman Point, Mumbai

APPERANCE:

Shri Mr. Rajeev D.Waglay, Advocate for the Appellant
Shri Mr. S.B.Mane, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO. A/86036 /2019

Date of Hearing: 31.01.2019

Date of Decision: 29.05.2019

AJAY SHARMA:

The instant Appeal arises from the impugned order dated 23.05.2015 passed by the IM/CGST A-1/MUM/66/18-19 in Order-in-Appeal No.IM/CGST A-1/MUM/66/18-19. The issue to be decided in the Appeal is whether the Appellant is entitled for Cenvat credit availed by them in respect of rent-a-cab service which admittedly was hired by the Appellant to provide car service to their guests.

2. The facts of the case in brief are as under:-

2.1 The Appellant is a three star hotel and in order to provide car service to their guests, they used to hire the same. The service provider used to charge the appellant for the same alongwith the service tax and the Appellant in turn charge the amount from the guests alongwith service tax. During the course of audit for the period 2011-12 to 2014-15, it appeared that the appellants had taken Cenvat credit on input services namely Rs. 2,17,693/- towards Rent-a-cab Service and Rs.21,069/- in respect of Professional charges viz. Expenses incurred towards Employee's State Insurance, Employee's Provident Fund etc., which according to Revenue, did not have nexus with the output services provided them. As per the Revenue, the professional services were in relation to their employees only and so far as Rent-a-cab service is concerned the appellant is not providing the same, rather they are arranging them from outside service provider. The service was utilised either for commuting of their employees or by their customers on specific requests received and both these services has not nexus with the output service. A show cause notice dated 11.8.2016 was issued to the Appellant for demanding Cenvat Credit of Rs.2,38,762/- wrongly availed and utilised by the Appellant alongwith interest under Section 75 r/w Rule 14 of Cenvat Credit Rules, 2004 (hereinafter referred to as "CCR, 2004") and also for imposing penalties u/Ss. 76,77 & 8 of Finance Act, 1994 r/w Rule 15 of CCR, 2004. The Adjudicating authority vide Order-in-Original dated 27.12.2016 confirmed the demand and ordered recovery of wrongly availed Cenvat Credit of Rs.2,38,762/- with interest and penalty. The 1st Appellate Authority

i.e. the learned Commissioner vide impugned order dated 7.6.2018 set aside the demand of Rs.21,069/- qua Cenvat credit availed on professional service and upheld the demand of Rs.2,17,693/- on Rent-a-cab service alongwith interest u/R. 14 of CCR, 2004 r/w Section 75 ibid and reduced the penalty to Rs.2,17,693/- u/R. 15(3) of CCR, 2004 r/w. Section 78 ibid.

3. I have heard learned counsel for the Appellant and learned Authorised Representative for the Revenue and perused the record. Learned counsel for the Appellant submitted that from the definition of capital goods, it is clear that motor vehicle used for renting is a capital goods in terms of Rule 2(a)(C)(ii) of CCR, 2004 and what is excluded under clause (B) of Rule 2(I) of CCR, 2004 is a motor vehicle which is not a capital goods. According to him the motor vehicle hired by the Appellant being a capital goods vis a vis the service provider, is not excluded from the definition of input service under Rule 2(I)(B) of CCR, 2004 and therefore input service credit in respect of the same cannot be denied to the Appellant. According to him, the Appellant received the input service for rendering the output service and hence was entitled for cenvat credit in respect of services received by it. Leaned Authorised Representative appearing for the Revenue reiterated the findings recorded in the impugned order.

4. Before analyzing the argument, it is necessary to refer to the definitions of 'input services' contained in Rule 2(I) of Cenvat Credit Rules, 2004. The said definition reads as under :-

Rule 2(I) "input service" means any service, -

xxx xxx xxx
but excludes services, -
xxx xxx xxx

or

xxx xxx”

“3. After hearing both the sides, I find that the definition of input service is contained in Rule 2(I) of the Cenvat Credit Rules, 2004 and relates to any service used by a manufacturer, whether directly or indirectly, in or in relation to manufacture of their final product and includes many services specified therein but excludes some of the services specified. An Exclusion Clause B was introduced w.e.f. 1-4-2011 to the following effect :

“(b) [Services provided by way of renting of a motor vehicle], insofar as they relate to a motor vehicle which is not a capital goods;]”

4. A reading of the above Exclusion Clause show that services provided by way of renting of a motor vehicle do not stand excluded in totality. The Exclusion Clause is in respect of input

services of renting of a motor vehicle, insofar as they relate to a motor vehicle which is not capital goods.

The contention of the assessee is that motor vehicle is a capital goods, as per the definition of the capital goods contained under Rule 2(a) of the Cenvat Credit Rules, 2004. The appellate authority has specifically observed that the said input service, i.e., renting of “motor vehicles” have been specifically included except in case where motor vehicle is eligible for Cenvat credit as capital goods.

5. He has however denied the benefit to the assessee on the ground that such motor vehicle are not capital goods for the appellant, Cenvat credit availed on the input services of renting of motor vehicle would not be admissible.

6. However, I find flaw in the above interpretation of appellate authority. He has rightly observed that the exclusion is only in respect of that motor vehicle which is not a capital goods. However, he has not extended the benefit to the assessee by observing that the same is not a capital goods for the appellant. A person who is receiving the input services of renting of immovable property, can never avail Cenvat credit of duty paid on the motor vehicles and as such motor vehicle can never be a capital good to the recipient of the said services. The motor vehicle will always be a capital goods or otherwise for the person who is providing the services. For service provider falling under the category of renting of motor vehicle the motor vehicle would always be a capital goods. As such the expression - “which is not a capital goods appearing in the said exclusion clause would require examination vis-à-vis the service provider and not vis-à-vis the services recipient.” As such the interpretation of the lower authorities that motor vehicle are not capital goods for the services recipient cannot be appreciated inasmuch as motor vehicles are admittedly capital goods in terms of the Rule 2(a) of Cenvat Credit Rules.

7. In view of the above analysis, I hold that the appellant would be entitled to the Cenvat credit on service tax paid on the said services. Accordingly, the impugned order is set aside and appeal allowed with consequential relief to the appellant."

6. Following the ratio of the aforesaid decision, I am of the opinion that the appellant is entitled to the Cenvat credit on service tax paid on the aforesaid service. Therefore the impugned order is set aside and the Appeal is allowed with consequential relief, if any.

(Order pronounced on 29/05/2019)

(Ajay Sharma)
Member (Judicial)

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