CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH – COURT NO.405

Service Tax Appeal No. 89640 of 2018

(Arising out of Order-in-Appeal No. NA/GST/A-III/MUM/169-170/2018-19 dated 25.07.2018 passed by the Commissioner of CGST & CX (Appeals-III), Mumbai)

M/s Overseas Infrastructure Alliance (India) Private Limited ....Appellant
501-502, OIA House, 470, Cardinal
Gracious Road,, Andheri(East)
Mumbai, Maharashtra-400009

VERSUS

Commissioner of CGST, Mumbai East ....Respondent
Null 9th floor, Lotus, Parel,
Lotus Infocentre,
Near Parel Station, Parel East,
Mumbai, Maharashtra-400012

WITH

Service Tax Appeal No. 89642 of 2018

(Arising out of Order-in-Appeal No. NA/GST/A-III/MUM/169-170/2018-19 dated 25.07.2018 passed by the Commissioner of CGST & CX (Appeals-III), Mumbai)

M/s Overseas Infrastructure Alliance (India) Private Limited ....Appellant
501-502, OIA House, 470, Cardinal
Gracious Road,,Andheri(East)
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VERSUS

Commissioner of CGST, Mumbai East ....Respondent
Null 9th floor, Lotus, Parel,
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Near Parel Station, Parel East,
Mumbai, Maharashtra-400012

APPEARANCE:

Ms Vijay K. Singh, Consultant for the Appellant
Mr. Onil Shivadikar, Assistant Commissioner & Mr. Nitin Ranjan Assistant Commissioner Authorised Representative for the Respondent

CORAM:

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

FINAL ORDER NO. A/85742-85743/2020

Date of Hearing: 06.01.2020
Date of Decision: 11.09.2020

PER: AJAY SHARMA

These Appeals have been filed impugning order dated 25.07.2018 passed by the Commissioner of CGST & CX (Appeals-III), Mumbai IN Order-in-Appeal No. NA/GST/A-III/MUM/169-170/2018-19. Since a common order has been passed by the authority below therefore I am also disposing of both the appeals by this common order.

2. The Appellant is engaged in the business of *Erection, Commissioning and Installation Service* and exporting the project to African Countries. They availed Cenvat credit of various input services and had filed two refund claims under Rule 5 of Cenvat Credit Rules, 2004 r/w Notification No. 27/2012-CE(NT) dated 18.06.2012, one for the period January to March 2016 amounting Rs. 1,97,05,122/- and another for the period April to June, 2016 amounting Rs. 46,22,646/- on the ground that they have exported erection, commissioning and installation services to Overseas clients but were not in a position to utilise the Cenvat credit taken on input services used in providing output services exported without payment of service tax. All the services claimed by the appellant, were considered by the Adjudicating Authority. Vide Order-in-Original dated 18.5.2017 as per the Adjudicating Authority so far as *Club or*

Association membership service, Design Service, Hotel Accommodation Service, Banking & Financial Service, Business Support Service, CA's service, Consulting Engineer, Director's sitting fee, Foreign Exchange Broking service, General Insurance service, Internet Telecommunication Services, IT Software & Technology, Legal Consultancy Service, Management & Business Consultant, Manpower Recruitment supply service, Technical Inspection & certification, Technical Testing & analysis service and Telecommunication Service are concerned, those have been availed for the personal use of the employees and therefore not eligible for refund. While considering the *Sponsorship Service*, the Adjudicating Authority agreed with the contention of the Appellant that there is a nexus between the *Sponsorship service* and therefore the service tax credit for both the periods i.e. Rs.8,56,800/- is admissible. But since as per the said Authority, sponsorship are used for the whole contract which includes value of sale of goods and service portion, therefore only proportionate credit of the said amount of Rs.8,56,800/- is admissible and rest is disallowed. Aggrieved, the Appellant filed Appeal before the 1st Appellate Authority i.e. Commissioner and the learned Commissioner vide impugned order dated 25.7.2018 allowed Cenvat credit on most of the services except *Club or Association membership service, Design Service* and *Sponsorship Service.*

3. Learned consultant for the appellant submits that so far as the question about admissibility of Cenvat Credit of Rs.8,56,800/-[i.e. Rs.8,21,800 for the period January to March, 2016 + Rs.35,000/-

from April to June, 2016] on Sponsorship Service is concerned, the same was allowed by the Adjudicating Authority in favour of the Appellant and it was not challenged before the learned Commissioner by the Appellant nor any cross-appeal/cross-objection was filed by Revenue before the learned Commissioner (Appeals), but still the learned Commissioner took it up and rejected the same which is beyond the its jurisdiction. He further submits that Cenvat Credit on the Club or Association Membership Service and Design Service were wrongly rejected by both the authorities below being ineligible. According to him these services are not for personal or recreational activity of the appellants or its employees and therefore are input services for the appellants as per Rule 2(l) of Cenvat Credit Rules, 2004. Per contra learned Authorised Representative appearing for Revenue reiterated the findings recorded in the impugned order and prayed for dismissal of Appeal.

4. I have gone through the case records including the orders of both the authorities below, it is clear that the Adjudicating Authority granted relief to the appellants qua *sponsorship service* proportionately and the same was neither challenged by the Appellant nor by the Revenue before the Commissioner, but the learned commissioner still chooses to give findings on the said service also that too in the Appeal filed by the Appellant. Therefore in my view and also in view of the decision of a co-ordinate Bench of the Tribunal in the matter of *CCE, Bangalore vs. Mavenir Systems Pvt. Ltd.; 2012(27) STR 510(Tri-Bang.)*, the findings recorded by the learned Commissioner on the said service is beyond his jurisdiction

and hence liable to be ignored. Learned Commissioner could not have passed any further order beyond the scope and ambit of the appeal before it and by doing so in this case, it has exceeded its jurisdiction and exercised the power which is not vested in it. Now I take up the issue of *Club or Association membership service* and *Design Service*. An amount of Rs.77,875/- is in issue against *Club or Association Membership Service* for both the periods i.e. January to March, 2016 and April to June, 2016 and an amount of Rs.58,489/- is in issue qua *Design Service* for the period January to March, 2016 only. A reading of Rule 2(l) (C) of CCR, 2004 makes it clear that after 01.04.2011 certain services have been specifically excluded from the definition of 'input service' which includes membership of club also but this exclusion is only when such services are used primarily for personal use or consumption by any employee Meaning thereby that this exclusion will not apply in other cases e.g. Corporate club membership without naming any specific employee will be eligible. It is the case of the appellant that they have not been availed for personal or recreational activity. Nothing has been produced, except mere allegation, by the department to establish that the club or association membership has been used or consumed by any employee personally. Documentary evidence has been submitted by the Appellant before the authorities below to establish the plea that service tax has been paid with regard to membership of ASSOCHAM, National Highway Builders Federation, the Taj Mahal Hotel and Federation of Indian Exports Organisation. In the instant matter the appellant is engaged in the business of Erection, Installation or

Commissioner service for the aforesaid purpose in today's scenario everybody wants latest, fast and more economical technology and therefore the membership of such kind of Federation etc. are essential for getting day to day information about the latest trends etc. in the concerned Industry as now a days technologies are changing very fast. It is not the case of Revenue that the membership has been taken in the name of any particular employee. In my considered view the absence of these services will have an impact on the quality and efficiency of output service and therefore will be eligible as input service. So far as membership of Taj Mahal Hotel is concerned since the members gets priority in the respective hotels where they are members therefore membership of hotels also becoming essential day by day as the members can get conference halls, cabins etc. in a short notice for conducting business meetings with foreign delegates etc. and the same is the case of the appellants also. Therefore it has also nexus with the output service. Similarly Diaries/calendars etc. are also essential part of business promotion therefore designing them can very well be said to have nexus with the output service.

5. In view of the discussions as aforesaid, the appeals filed by the appellant deserve to be allowed with consequential relief as per law.

(Order pronounced in the open Court on 11.09.2020)

(Ajay Sharma)
Member (Judicial)

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