

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

Service Tax Appeal No. 89641 of 2018

(Arising out of Order-in-Appeal No. NA/GST/A-III/MUM/179-181/2018-19 dated 03.08.2018 passed by the Commissioner of Central Excise & CGST (Appeals-III), Mumbai)

**M/s. Overseas Infrastructure Alliance (India) Appellant
Pvt. Ltd.**

501-502, OIA House, 470, Cardinal Gracious Road,
Andheri (E), Mumbai 400 009.

Vs.

Commissioner of CGST, Mumbai East

Respondent

9th floor, Lotus, Lotus Infocentre,
Near Parel Station, Parel (E), Mumbai 400 012.

WITH

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Near Parel Station, Parel (E), Mumbai 400 012.

Appearance:

Shri Vijai Kumar Singh, Consultant, for the Appellant

Shri Dilip Shinde, Assistant Commissioner, Authorised Representative
for the Respondent

CORAM:

HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO. A/ **87170-87171/2021**

Date of Hearing: 18.11.2021

Date of Decision: 18.11.2021

These two appeals are filed against Order-in-Appeal No. NA/GST/A-III/MUM/179-181/2018-19 dated 03.08.2018 of the Commissioner of Central Excise & CGST (Appeals-III), Mumbai, by which the Commissioner (Appeals) has held as follows: -

“ORDER

12. The impugned order No. 18 to 20/STC-V/ADDL-RS/OIAIL/16-17 dated 15.05.2017 is therefore modified as under:

1. In respect of SCN dated 22.10.2012 (Appeal No. ST-II/311/2017-18)

i) The amount of demand confirmed stands reduced from Rs.21,24,082/- to Rs.12,04,714/.

ii) The penalty under Section 78 of FA 1944 read with Rule 15(3) and 15(4) of Cenvat Credit rules 2004 stands reduced from Rs.21,24,082/- to Rs.10,91,115/-.

2. In respect of SCN dated 01.01.2013 (Appeal No. ST-II/312/2017-18)

i) The amount of demand confirmed stands reduced from Rs.9,81,258/- to Rs.2,30,720/-.

ii) The penalty under Section 76 of FA 1944 read with Rule 15 of Cenvat Credit rules 2004 stands reduced from Rs.98,126/- to Rs.23,072/-.

3. In respect of SCN dated 08.03.2014 (Appeal No. ST-II/313/2017-18)

i) I set aside the confirmation of amounting to Rs.56,07,130/- along with the interest and penalty.

Rest of the impugned order is upheld.”

1.2 No appeal or cross appeal has been filed in respect of dropping of the demand.

2.0 I have heard Shri Vijai Kumar Singh, Consultant, and Shri Dilip Shinde, Assistant Commissioner, Authorised Representative for the Revenue.

3.1 Learned consultant submits that –

- the issue involved in the matter is in respect of admissibility of cenvat credit in respect of Club and Association services and Outdoor Catering services for the period prior to 2011.
- In respect of Outdoor Catering services, as the amount is merely Rs.6,347/-, the same is not pressed.
- In respect of Club and Association services, the issue for the subsequent period has been decided by this Tribunal vide order No. A/85742-85743/2020 dated 11.09.2020 in favour of the appellant.
- Appeal to the extent of cenvat credit in respect of Club and Association services should be held admissible.

3.2 Learned Authorised Representative reiterates the findings in the impugned order.

4.1 I have considered the impugned order along with the submissions made in appeal and during the course of argument.

4.2 I find that the issue is squarely covered in respect of Club and Association services in favour of the appellant by the order referred to by the learned consultant. The Tribunal has in para 4 of the order observed as under:-

“4. 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 1-4-2011 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."

5.0 In the result, the appeals are partially allowed to the extent of cenvat credit in respect of Club and Association services.

(Order pronounced in the open court)

(Sanjiv Srivastava)
Member (Technical)

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