

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

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 87325 of 2019

(Arising out of Order-in-Appeal No. MKK/409/RGD APP/2018-19 dated 09.01.2019 passed by the Commissioner of Central Excise & Service Tax (Appeals), Mumbai)

M/s Asrani Inns & Resorts Pvt. Ltd.

.... Appellant

5th Floor, JMJ House, Orchard Avenue, Hiranandani
Garden, Powai, Mumbai – 400076.

Versus

**Commissioner of Central Goods &
Service Tax Navi Mumbai**

.... Respondent

10th Floor, Satra Plaza, Palm Beach Road,
Sector 19D, Vashi, Navi Mumbai – 400705.

Appearance:

Shri Keval Shah, Advocate for the Appellant

Shri Prabhakar Sharma, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85250/2023

Date of Hearing: 22.02.2023

Date of Decision: 22.02.2023

Per: Anil G. Shakkarwar

Heard both the sides.

2. The appellant provides taxable services and is registered in Mumbai. They have constructed two hotels one in Delhi and another in Hyderabad. They have availed CENVAT Credit of Service Tax paid on Architect Service, telephone expenses, security services, legal and professional service, structural consultancy

service, soil investigation work, fabrication and irrigation. Undisputedly the said services were utilized for construction of hotels in Hyderabad and Delhi. The issue is whether after amendment to definition of input service under Rule 2(l) of CENVAT Credit Rules, 2004, with effect from 01.04.2011, the said CENVAT Credit was admissible to the appellant or not specifically after the words "setting up" has been deleted from the definition. The lower authorities have held that the construction of hotel premises at Hyderabad and Delhi was setting up and therefore denied CENVAT Credit part. Learned AR also subscribe to the same view.

3. The learned Advocate for the appellant relies on the decision of coordinate Bench of this Tribunal in the case of Lemon Tree Hotel Vs Commissioner of Central Excise Hyderabad, reported at (2017) 84 taxman.com 157. He has submitted that the Bench in the said decision have observed as follows:

"7. It is undisputed that the services are utilize for bringing into existence building which is used by the appellant for hospitality business and is used for rendering of services like mandap keeper, health club and fitness service and dry-cleaning service and internet café services. It is unimaginable that the hotel can render these services without a building in its place. In our considered view the input services are availed by the appellant in the works contract services, project management services and structural professional services used for construction of a building which subsequently is to be used for rendering the taxable output services".

It was further held that CENVAT Credit on input services which are used for bringing into existence of immovable property are eligible for availment of CENVAT Credit by this Tribunal.

4. Following the observation in the above said case, I hold that in the present case activity was that of construction and therefore the services stated such as architect service, telephone expenses etc. were input services and therefore the Service Tax paid on the said services is eligible as CENVAT Credit to the appellant.

5. I, therefore, set aside the impugned order and allow the appeal.

(Order pronounced and dictated in open court)

(Anil G. Shakkarwar)
Member (Technical)

Sinha