

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
BANGALORE**

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 20370 of 2023

[Arising out of Order-in-Appeal No. 06/2022-23-CT dated 05.05.2022 passed by the Commissioner of Central Tax (Appeals-II), Bangalore]

Bangalore Housing Development & Investments

10/1, Lakshmi Narayan Complex,
Palace Road, Bangalore - 560062

.....Appellant

VERSUS

**Commissioner of Central Tax,
Bangalore North**

Bangalore North GST Commissionerate,
HMT Bhavan, Bangalore - 560032

.....Respondent

APPEARANCE:

Present for the Appellant: Ms. Suja A. Krishnan, Advocate

Present for the Respondent: Sh. Dyamappa Airani, A.R.

CORAM:

HON'BLE Dr. D. M. MISRA, MEMBER (JUDICIAL)

FINAL ORDER NO. 20992/2023

DATE OF HEARING: 06.10.2023

DATE OF DECISION: 12.10.2023

PER D. M. MISRA

This is an appeal filed against Order-in-Appeal No. 06/2022-23-CT dated 05.05.2022 passed by the Commissioner of Central Tax (Appeals-II), Bangalore.

2. Briefly stated facts of the case are that the appellant are engaged in providing taxable services under the category of Renting of Immovable Property Service, Real State Agent Service, Rail Travel Agent Service etc. during the relevant period. Pursuant to an audit conducted on the records of the appellant pertaining to the period April, 2014 to June, 2016, it was noticed that the appellant had short paid interest on delayed payment of service tax amounting to Rs. 13,01,548/- for the period April, 2017 to June, 2017 and Rs. 4,36,546/- for the period July, 2016 to March, 2017. Also, they had availed inadmissible CENVAT Credit of Rs. 13,77,515/-. Consequently, a show cause notice was issued to the appellant on 02.12.2019 for recovery of aforesaid amounts with interest and proposal for imposition of penalty. On adjudication, the demand was confirmed with interest on the irregular availment of CENVAT Credit, equivalent penalty and recovery of the differential interest. Aggrieved by the said order, the appellant filed an appeal before the Id. Commissioner (Appeals) who, in turn, rejected their appeal. Hence, the present appeal.

3.1 At the outset, the Id. Advocate for the appellant submits that the CENVAT Credit of Rs. 13,77,515/- was availed by them on receiving banking and financial service, which has been used in relation to providing of output service namely 'Renting of Immovable Property Service'. She submits that the said service squarely covered under the definition of 'input service' as

prescribed under Rule 2(I) of the Cenvat Credit Rules, 2004 being specifically covered under the scope of "financing" mentioned in the inclusive part of the said definition. In support she has referred to the judgments of this Tribunal in the cases of ***Select Infrastructure Pvt Ltd vs. CCE, Delhi-I – 2018-TIOL-688-CESTAT-DEL*** and ***Aluminium Powder Co Ltd vs. CC CE & ST, Madurai – 2016 (42) S.T.R. 776 (Tri. – Chennai)***. She further submits that the reasoning recorded by the Id. Commissioner (Appeals) in denying the said credit to them in observing that renting of immovable property is the right to use the property and hence the service, used in relation to maintenance of such property, is not admissible to CENVAT Credit, is incorrect and not sustainable. She further submits that this issue is also covered by the judgment of this Tribunal in the case of ***Oberon Edifices & Estates Pvt Ltd vs. CC CE & ST, Cochin vide Final Order No. 20922-20924/2023 dated 01.09.2023***. In the said judgment this Tribunal following its earlier decision in ***Golflinks Software Park Pvt Ltd vs. CST, Bangalore – MANU/CB/0040/2018*** which has been upheld by the Hon'ble Karnataka High Court, has held that CENVAT Credit on various input services used in providing Renting of Immovable Property service is admissible.

3.2 Further, she has submitted that on the differential amount of interest demanded on service tax paid by the appellant, the interest was calculated by the department applying

the rate of interest as 24% whereas they have discharged interest calculating @15%. She submits that even though, the department has alleged that the appellant had collected service tax from the customers but paid the same belatedly to the department, but no evidence has been placed on record. Therefore, the demand of interest @24% cannot be sustained. She also submits that since the appellant has rightly availed CENVAT Credit on banking and financial services used for providing the output services namely Renting of Immovable Property service, therefore, imposition of penalty equivalent to CENVAT Credit amount is unsustainable and hence be set aside.

4. On the other hand, the Id. A.R. for the Revenue reiterates the findings of the Id. Commissioner (Appeals). He submits that the department has preferred appeal against the judgment of Hon'ble Karnataka High Court before the Hon'ble Supreme Court, which is pending till date. He further submits that the appellant though collected the rent from the clients periodically along with service tax but has not discharged service tax so collected on due dates. Accordingly, as per Sl. No. 1 of Notification No. 13/2016-ST dated 01.03.2016, the applicable rate of interest is 24% as the appellant has applied the rate of interest as 15%. Hence, the differential interest amount is recoverable.

5. Heard both sides and perused the records.

6. Two issues are involved for determination in the present appeal are: (i) whether CENVAT Credit is admissible on banking and financial service used by the appellant in providing Renting of Immovable Property service during the relevant period; (ii) Interest rate be 15% or 25% for belated payment of service tax.

7. The Id. Commissioner (Appeals) accepting the Revenue's stand that Renting of Immovable Property is only right to use the said property and the immovable property is neither subjected to excise duty nor service tax, hence, the input service is not rendered in providing any output service. This reasoning has been considered by this Tribunal in the light of Board's Circular No. 98/1/2008-ST dated 04.01.2008 in the case of **Golflinks Software Park Pvt Ltd** (supra) and rejecting the said view observed that cenvat credit is admissible on the service tax paid on various used in the maintenance of the immovable property; this decision of the Tribunal later on appeal by the Tribunal has been rejected by the Hon'ble High Karnataka High Court endorsing the view of the Tribunal. Following the said judgement in **Oberon Edifices & Estates Pvt Ltd's** case (supra), it was held that various input services used in providing Rental of Immovable Property service are admissible to CENVAT credit. Following the aforesaid decisions of this Tribunal, I am of the opinion that CENVAT Credit availed on 'banking and financial services' used in providing Renting of Immovable Property service is admissible.

8. Regarding the demand of differential interest for the respective periods, I find that the department has specifically alleged in the notice that the appellant had collected rent on monthly basis along with service tax from the tenants; however, they have not deposited service tax so collected as on due date. The appellant have been disputing the said allegation of Revenue at all levels. On being inquired during the course of hearing to place the invoices under which rent was collected from the tenants, the Id. Advocate for the appellant expressed inability to produce a single copy of the invoices. Thus, the appellant could not establish that service tax was not collected earlier, hence could not be deposited before the due date. In these circumstances, I do not find merit in the contention of the Id. Advocate that their case falls under Sl. No. 2 of Notification No. 13/2016-ST dated 01.03.2016. On the other hand, the applicable interest would be @24% on the service tax amount paid belatedly even though collected from service receivers.

9. In the result, the impugned order is modified to the extent mentioned as below:

(a) CENVAT Credit of Rs. 13,77,515/- during the period is admissible. Hence, penalty imposed and interest levied are accordingly set aside.

(b) Interest @24% for the period in question confirmed, accordingly, the appellant are require to pay total interest

of Rs. 17,38,094/- after adjusting the amount, if any,
paid earlier, for relevant periods.

10. The Appeal is disposed of as above.

(Order pronounced in the court on 12.10.2023)

(D. M. MISRA)
MEMBER (JUDICIAL)

RA_Saifi