IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, HYDERABAD

REGIONAL BENCH – COURT NO.1

Service Tax Appeal No.27964 of 2013

(Arising out of Order-in-Original No.42/2013-Adjn (Commr) S.T. dated 29.05.2013 passed by Commissioner of Customs &Central Excise, Hyderabad-IV Commissionerate.)

M/s. VITP Private Limited
(formerly known as Vanenburg IT Park Private Limited)

(The V, Admin Block, Mariner, Plot # 17, Software Units Layout, Madhapur, Hyderabad, Andhra Pradesh-500081.)

...Appellant

VERSUS

Commissioner of Central Tax, Hyderabad-IV

.....Respondent

(PosnettBhavan, Tilak Road, Ramkote, Hyderabad, Andhra Pradesh-500001.)

WITH

(i) Service Tax Appeal No.20282 of 2014 (M/s. VITP Private Limited); (ii) Service Tax Appeal No.21736 of 2014 (M/s. VITP Private Limited); (iii) Service Tax Appeal No.21497 of 2015 (M/s. VITP Private Limited);

(i) (Arising out of Order-in-Original No.73/2013-Adjn (Commr) S.T. dated 23.10.2013 passed by Commissioner of Customs, Central Excise & Service Tax, Hyderabad-IV Commissionerate.)

(ii) (Arising out of Order-in-Appeal No.12/2014(H-IV) S.T. dated 21.01.2014 passed by Commissioner of Customs, Central Excise & Service Tax, (Appeal-II), Hyderabad.)

(iii) (Arising out of Order-in-Original No.HYD-EXCUS-004-COM-021-14-15 dated 20.03.2015 passed by Commissioner of Customs, Central Excise & Service Tax, Hyderabad-IV Commissionerate.)

APPEARANCE

Shri S.Tirumalai, Advocate for the Appellant (s)

Shri A. Rangadham & Shri C. Mallikarjun Reddy, both Authorized Representative for the Respondent (s)

CORAM: HON'BLE SHRI P. K.CHOUDHARY, MEMBER(JUDICIAL)
HON'BLE SHRI P.V.SUBBA RAO, MEMBER(TECHNICAL)

FINAL ORDER NO: A/30070-30073/2022

DATE OF HEARING : 3 March 2022
DATE OF DECISION : 8 July 2022

P.K.CHOUDHARY :

M/s. VITP Pvt.Ltd. (hereinafter referred to as the Appellant) is presently engaged in the business of development of IT Parks and such other industrial and commercial places which are subsequently given on rent to a wide spectrum of industries.

2. The facts of the case in brief are that the Service Tax Audit was conducted by the audit team led by the Superintendent, Service Tax, Group-VII, Hyderabad-IV Commissionerate covering the transactions of the Appellant. The disputes arising in all the four Appeals pertain to the period from June 2007 to June 2013 and some issues are common in these Appeals. Hence all the four Appeals are taken up together and are being disposed by this common order. For better appreciation of facts, a table has been reproduced below which shows the issues before us in details in each of the Appeal:-

Sl. No.	**Particulars**	**Appeal details**			
		ST/27964/2013 (Appeal I)	**ST/20282/2014 (Appeal II)**	**ST/21736/2014 (Appeal III)**	**ST/21497/2015 (Appeal IV)**
1.	Period	June 2007 to March 2011	April 2011 to September 2012	April 2010 to September 2012	October 2012 to June 2013
2.	**Demand**	**INR 11,58,22,869**	**INR 4,34,55,505**	**INR 14,62,807**	**INR 45,86,180**
		(i) Security Deposit – INR 2,87,57,891 *(ii) Reimbursement expenses – INR*	*Security Deposit* *- INR 1,13,91,754*	*Termination charges – INR 14,62,807*	*Reimbursement of Diesel charges – INR 45,85,180*

		6,70,02,785 *(iii) Credit related to construction of immovable property* *INR 1,93,65,135* *(iv) Credit on event management* *-INR 6,97,058*	*Reimbursement expenses – INR 3,20,63,751*		
3.	SCN & OIO details	SCN No.143/2012 dated 17 May 2012 (page 206)	SCN No.297/2012 dated 11 December 2012 (page 102)	SCN No.275/2012 dated 17 December 2012 (page 107) and OIO No.134/2013 dated 30 August 2013 (page 151)	SCN No.13/2014 dated 8 January 2014 (page 68)
4.	Impugned order details & findings	OIO NO.42/2013 dated 29 May 2013 (page 78)	OIO No.73/2013 dated 23 October 2015 (page 36)	OIA No.12/2014 dated 21 January 2014 (page 40)	OIO No.HYD-EXCUS-004-COM-021-14-15 dated 20 March 2015 (page 97)

3. The demand and the confirmation of the Service Tax liability is confined to the following five issues:-

(a) Security Deposits received by the Appellant from their tenants is held to be liable under 'Renting of Immovable Property Services'.

(b) Service Tax has been demanded on the amount received towards the re-imbursement of expenditure in respect of water, electricity and diesel charges under the category of 'Management, Maintenance or Repair Services'.

(c) Denial of Cenvat Credit on the input services used for construction of immovable property.

(d) Denial of Cenvat credit on the input services used for promoting their premises for better lease opportunities.

(e) Service Tax has been demanded on the termination charges collected from the tenants for pre-mature termination of the lease deed.

4. The Appellant has claimed in the grounds of Appeal as regards the taxability of Security Deposit received by them that the Security Deposit is collected by them which is refundable deposits and are returned to the respective tenants at the time of termination of the lease and no service is rendered in relation to the receipt of the Security Deposit. They have relied upon the provisions of Section 67 of the Finance Act 1994 for the term, 'the value of taxable service' would mean that the gross amount charged by a service provider for the taxable services rendered or to be rendered and also relies upon the clarification given by the CBEC as regards the same. It is the submission of the Appellant that when no taxable service is being rendered with relation to the Refundable Security Deposit collected, there can be no question of construing the Security Deposits from the tenants as includible in the gross value of the services provided by the Appellant under the taxable service category of 'Renting of Immovable Property Services'. They have also relied upon the decision of the Hon'ble Supreme Court in the case of Association of Leasing & Financial Companies Vs. UOI [2010 (20) S.T.R. 417 (S.C.)] and the Tribunal's decision in the case of Futura Polyester Ltd. Vs. Commissioner of Central Excise, Chennai-I [2013 (29) S.T.R. 371 (Tri-Chennai)]

5. It is further submitted that the aforesaid deposit is refunded by the lessor i.e. the Appellant to the lessee on termination of the lease deed. As a measure of business prudence, the above venture amount is collected so that a certain security is available to the Appellant if the lessee is not able to pay the rent. This amount is refundable once the possession of the property has been handed over to the landlord and is interest-free. As regards the Service Tax liability on the amounts received on reimbursable towards the water, electricity and diesel charges, it is the submission of the Ld. Advocate that reimbursable expenses collected towards diesel charges are used for meeting the

requirement of the Appellant and the tenants. Diesel is used to run the generator sets. Depending on the usage of the electricity by each tenant as per the installed sub-meter, the cost of diesel is apportioned between the tenants on actuals. Electricity is provided to the tenants and the billing is made on the basis of the apportionment on the diesel cost to generate such electricity. Thus, what is being sold to the tenants is electricity. However, for billing purpose the cost incurred for the produce of the diesel is considered. It is also submitted that on the maintenance charges in respect of DG sets, the Service Tax is already discharged.

6. The Appellant submits that the reimbursable expenditure received towards diesel charges by the Appellant from their tenants/customers are on account of actual charges incurred by the Appellant (landlord) and cross charged to the tenants on actuals based on the floor ratio (for the period prior to 2011). Thereby, cost of diesel is a good used in the DG Set, cannot be qualified as a service to be included for the purpose of 'Management, Maintenance or Repair Services'. As per Notification No.12/2003-Service Tax dated June 20, 2003, deduction is available for the value of the goods and the materials sold by the service provider to the service recipient during the course of providing the service and the remaining sum will be chargeable to Service Tax at 12.24%, subject to the condition that there is documentary proof specifically indicating the value of the aforesaid goods and materials. Reliance is placed on the case of Safety Retreading Co. (P) Ltd. v. CCE, Salem [2017 (48) STR 97 (SC)]. There is no finding in the present case that the said notification is not applicable to the facts of the Appellant's case when diesel is a good (commodity), used in the DG set.

7. The Appellant also places reliance on the case of Ganpati Associates v. Commissioner of Central Excise & Central Goods and Service Tax, Jaipur [2019 (5) TMI 1233 – CESTAT New Delhi which

supports the above position and is favourable to the present facts in the Appellant's case at hand.

8. Thereby, since the Appellant is merely collecting these charges on actuals as a landlord from the tenants and making payments to service providers, it is clear that such amounts cannot form part of the value of service. This is a settled position of law in the case of International Consultants & Technocrats Pvt.Ltd. v. Union of India [2013 (29) STR 9 (Del.)] as affirmed by the Supreme Court in 2018 (10) GSTL 401 (S.C.).

9. Regarding reimbursable expenditure received towards water and electricity charges, it is submitted that the same are on account of actual charges incurred by the Appellant and cross-charged to the tenants on actuals based on the floor ratio. In respect of electricity charges, the Appellant submits that there is a common single meter installed by the electricity department for the entire complex. The Appellant had installed independent sub-meters for respective units to ascertain the electricity consumed by each tenant. Out of the total amount billed to the Appellant by the electricity department, the proportional amounts are charged back to the respective tenants depending on the electricity consumed by each tenant. The charges relating to the electricity used in the common space such as lobby, staircase etc. is incurred by the Appellant being landlord and the same is cross charged to the tenants based on the floor ratio. The Appellant also procures/purchases water from Andhra Pradesh Industrial Infrastructure Corporation (APIIC) and other sources and cross-charges the same to the tenants on the basis of the floor area occupied by each tenant.

10. It is further submitted that in the impugned order in respect of Service Tax Appeal No.21497 of 2015, the Adjudicating authority has dropped the demands pertaining to reimbursement of expenses collected towards water and electricity charges and also in respect of

Security Deposit in its entirety. Since the department has not challenged this order by way of an Appeal, therefore these issues have attained finality in favour of the Appellant.

11. Regarding Cenvat Credit related to construction of immovable property, it is submitted that Cenvat credit has been correctly availed on input services like works contract service, construction service, consultancy, fire protection service used in the construction of immovable property as per Rule 2(l) of Cenvat Credit Rules, 2004. In support of his submission, the Ld.Advocate relied upon decisions of the Tribunal in the case of Regency Park Property Management Services Pvt.Ltd. v. CST, Delhi [2020-TIOL-549-CESTAT-DEL] and also the judgement of Hon'ble High Court of Madras in the case of CGST & CX, Chennai v. Dymos India Automotive Pvt. Ltd. [2019 (365) ELT 26 (Mad.)].

12. Further as regards Appeal III, the department has levied service tax on the termination charges collected by the Appellant from the customers for early termination of the lease agreement under the category of renting of immovable property services for the period April 2010 to September 2012. The contention of the Appellants Advocate in this regard is that the said charges have not been collected towards the services of renting of immovable property service and it cannot be added for valuation of service tax purposes under the said service head. It is further contended that prior to 01.07.2012, to levy service tax it has to be classified as a distinct category of service and there is no classification under the Finance Act, 1994 to tax such receipt of money for termination of lease agreement.

13. The Ld. Authorized Representatives for the department reiterated the findings of the lower authorities to confirm the demand.

14. Heard both sides through video conferencing and perused the appeal records.

15. We find that the following issues are to be decided in order to dispose of all the four appeals vide this common order:

a. Applicability of service tax on refundable security deposit collected by the Appellant from its customers
b. Applicability of service tax on reimbursement of expenses from its customers on account of water, electricity and diesel expenses incurred for provision of services
c. Applicability of service tax on termination charges collected from customers for early termination of lock in period of lease
d. Eligibility of Cenvat credit of works contract services and other services for construction of immovable property and Cenvatcredit on event management services for promotion of business of the Appellant.

16. As regards the first issue of applicability of service tax on refundable security deposit collected by the Appellant from its customers, we find from the case records that it is not in dispute that the said amounts are collected as a refundable security deposit by the Appellant and the same is returned to the customers at the end of the lease period with no interest as per section 5 of the Lease Deed as submitted by the Appellant at Page 291 of the Appeal I. We find that the said amounts are not collected towards any provision of service but as a refundable deposit and as such the amounts cannot be treated as consideration for renting/leasing of immovable property services. We find the above issue is no longer res integra in view of the judgment of the Tribunal in the case of SAMIR RAJENDRA SHAH Versus COMMISSIONER OF CENTRAL EXCISE, KOLHAPUR 2015 (37) S.T.R. 154 (Tri. - Mumbai) wherein in a similarly placed situation, it has been held as follows:-

> ***"7.*** *The appellant has contested only the quantum of Service Tax but not the levy of Service Tax. Therefore, we have to consider the issue of quantum of tax on which the appellant has to pay the Service Tax. Admittedly, the security deposit collected by the appellant is*

refundable at the time of termination of lease/rent agreement. Therefore, the said security deposit cannot form a part of service provided by the appellant. Therefore, on the said amount, Service Tax is not payable. We have examined the copy of the agreement produced before us by the appellant. As per the agreement, the Service Tax is payable separately by the lessee. As the appellant has not recovered Service Tax from the lessee, they may recover separately. Therefore, the contention of the appellant as they have not recovered the Service Tax from the lessee, the rent recovered by them be treated as cum-Service Tax is not acceptable. In these circumstances, we hold that the rent received by the appellant shall be treated as gross value of taxable service and on the said amount the appellant is required to pay Service Tax."

17. We also find that the Tribunal in the case of ELECTRONICS TECHNOLOGY PARK Versus COMMISSIONER OF CUS., C. EX. & S.T., TRIVANDRUM [2022 (56) G.S.T.L. 182 (Tri. - Bang.)] has also held on similar lines as follows :-

***"6.4** Coming to issue No. 3, whether notional interest on refundable deposits can be included in the value of taxable supply for levy of service tax, we find that lease rental was the consideration for renting of premises and the security deposit was in the nature of security against default in payment of lease rental, damage to building, fitting, fixtures etc. We do not find any nexus between renting of premises, the prescribed lease rental and the security deposit. In fact, security deposit amount is refunded on termination of lease after adjusting any recovery towards any unpaid amounts. More over security deposit is not a consideration or additional consideration for renting or leasing of the premises. There is no finding that the notional interest on refundable deposit has resulted in undervaluation of service of renting of immovable property and further there is no evidence of nexus between the two. This issue of inclusion of notional interest on refundable security deposit is settled issue now. We find that in the case of Murli Realtors Pvt. Ltd. cited supra, it was observed by the Tribunal that security deposit is taken for a different purpose altogether. It is to provide for a security in case of default in rent by*

the lessee or default in payment of utility charges or for damages if any caused to the leased property. Thus the security deposits serves a different purpose altogether and it is not a consideration for leasing of the property. Same ratio was followed in the case of Karnataka Industrial Areas Development Board cited supra. Hon'ble High Court of Bombay has held in the case of Commissioner of Income Tax v. J.K. Investors (Bombay) Ltd. [248 ITR 723 (Bom.)] that notional interest on security deposits should not be considered for the purpose of inclusion in actual rent. By following the ratios of the various decisions cited supra, we hold that notional interest on refundable deposit cannot be included in the value of taxable service for the purpose of levy of service tax and this issue is decided against the Revenue."

18. We do not find any reason to differ from the above view taken by the Tribunal as above and thus the demand of service on security deposit cannot be sustained and is thus set aside.

19. Next, as regards the demand of service tax on reimbursement of expenses of diesel, water and electricity from the customers, we find that the issue of inclusion of reimbursements in the consideration for value of services was dealt by Hon'ble Supreme Court in the case of Union of India v. Intercontinental Consultants and Technocrats Pvt. Ltd. — 2018 (10) G.S.T.L. 401 (S.C.) and Rule 5(2) of the Service Tax (Determination of Value) Rules, 2006 was held to be ultra vires the section 67 of the Finance Act, 1994.

20. Further for the Appellant's case vide Order-in-Original No. HYD-EXCUS-004-COM-021-14-15 dated 20.03.2015, the demand for service tax on water and electricity reimbursements have been dropped and has been accepted by the department also as no further appeal has been preferred against the said order dated 20.03.2015.

21. In the case at hand, the fact that the expenses are mere reimbursement based on total cost incurred by the Appellant and the total floor area of the customers is not in dispute which goes to show that there is no profit element involved in the above reimbursements.

The department has not been able to contradict the above fact either. Hence, having regard to the judgment of the Hon'ble Supreme Court (*supra)* we find that the Appellant cannot be saddled with the liability on such reimbursements on account of water, electricity and diesel charges and thus the demand of service tax on this ground cannot be sustained either and is thereby quashed.

22. Next, as regards the third issue of service tax on termination charges, we find that the Ld. Adjudicating authority has totally misinterpreted the reasons for such collection and linked it with the rental income of the Appellant which in our considered view cannot be a good position to hold. We find that there was no service rendered by the Appellant towards such charges and the same was in the nature of penalty for early termination than the agreed terms of lease. Thus, it is not a consideration for the service of renting of immovable property but a compensation or liquidated damages for reneging the contract of renting. Also, it is on record that the department has considered the above amounts for termination charges also in the demand under security deposit above as these charges were adjusted with the deposit lying with the Appellant and thus on this score also, the demand cannot be sustained as it will lead to taxing the same amount twice. Hence we are in complete agreement with the point raised by the Appellants and the demand on account of termination charges is also liable to be quashed.

23. Lastly, as regards the issue of eligibility of Cenvat credit on input services used for construction of immovable property, we find that the period covered in the present appeals before us is June 2007 to March 2011 i.e. prior to the Cenvat credit Rules, 2004 which were amended w.e.f 01.04.2011. We find that the above issue is also now settled in favour of the Appellants by the judgment of the Principal Bench of the CESTAT, New Delhi in the case of REGENCY PARK PROPERTY MANAGEMENT SERVICES P. LTD. Versus COMMR. OF S.T., DELHI

[2020 (41) G.S.T.L. 372 (Tri. - Del.)] wherein the Tribunal had held as under :-

> ***"11.*** *The issue that arises for consideration in this appeal is as to whether the appellant was entitled to avail Cenvat credit on inputs, input services and capital goods used in the construction of the [Mall] for providing RIP service.*
>
> ***12.*** *In order to appreciate the issue, it would be appropriate to refer to the relevant provisions of the 2004 Rules.*
>
> ***13.*** *"Capital goods", "inputs" and "input services" have been defined in sub-clauses (a), (k) and (l) respectively of Rule 2 and are reproduced below :-*
>
> *(a) "capital goods" means :-*
>
> *(A) the following goods, namely :-*
>
> *(i) all goods falling under Chapter 82, Chapter 84, Chapter 85, Chapter 90, heading No. 68.05 grinding wheels and the like, and parts thereof falling under heading 6804 of the First Schedule to the Excise Tariff Act;*
>
> *(ii) pollution control equipment;*
>
> *(iii) components, spares and accessories of the goods specified at (i) and (ii);*
>
> *(iv) moulds and dies, jigs and fixtures;*
>
> *(v) refractories and refractory materials;*
>
> *(vi) tubes and pipes and fittings thereof; and*
>
> *(vii) storage tank, used -*
>
> *(1) in the factory of the manufacturer of the final products, but does not include any equipment or appliance used in an office; or*

(2) for providing output service;

(B) motor vehicle registered in the name of provider of output service for providing taxable service as specified in sub-clauses (f), (n), (o), (zr), (zzp), (zzt) and (zzw) of clause (105) of section 65 of the Finance Act;

****

(k) "input" means -

(i) all goods, except light diesel oil, high speed diesel oil and motor spirit, commonly known as petrol, used in or in relation to the manufacture of final products whether directly or indirectly and whether contained in the final product or not and includes lubricating oils, greases, cutting oils, coolants, accessories of the final products cleared along with the final product, goods used as paint, or as packing material, or as fuel, or for generation of electricity or steam used in or in relation to manufacture of final products or for any other purpose, within the factory of production;

(ii) all goods, except light diesel oil, high speed diesel oil, motor spirit, commonly known as petrol and motor vehicles, used for providing any output service.

Explanation 1. - The light diesel oil, high speed diesel oil or motor spirit, commonly known as petrol, shall not be treated as an input for any purpose whatsoever.

Explanation 2. - Input includes goods used in the manufacture of capital goods which are further used in the factory of the manufacturer; but shall not include cement, angles, channels, Centrally Twisted Deform bar (CTD) or Thermo Mechanically Treated bar (TMT) and other items used for construction of factory shed, building or laying of foundation or making of structures for support of capital goods;

(l) "input service" means any service, -

(i) used by a provider of taxable service for providing an output service; or

(ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products up to the place of removal,

and includes services used in relation to setting up, modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage up to the place of removal, procurement of inputs, activities relating to business, such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, and security, inward transportation of inputs or capital goods and outward transportation up to the place of removal;

14. *Rule 3 of the 2004 Rules deals with Cenvat credit. The portion relevant for the purposes of this appeal provides that a provider of taxable service shall be allowed to take credit to be called Cenvat credit on any input service by the provider of output service. Sub-rule (4) of Rule 3 provides that the Cenvat credit may be utilized for payment of service tax on any output service.*

15. *The contention of the appellant is that inputs, input services and capital goods were used by the appellant for the construction of a commercial Mall and subsequently the space in the Mall was rented out for commercial purposes. The Commissioner has denied Cenvat credit to the appellant for the reason that the activity of construction of the building is independent from the activity of renting out the premises and as the inputs, input services and capital goods on which Cenvat credit has been availed by the appellant had been used for construction of the immovable property on which no service tax was leviable, the appellant would not be entitled to avail Cenvat credit on such input, input service and capital goods used for the construction of the immovable property.*

16. *The issue as to whether the Cenvat credit availed for the construction of a Mall and subsequent renting has been considered time and again by the High Courts and the Tribunal.*

17. *The Madras High Court in Dymos India Automotive examined whether Cenvat credit on 'commercial or industrial construction' service can be utilized for payment of service tax on 'renting of immovable property' and observed as follows :-*

> *"10. The Tribunal also referred to the decision in the case of CCE, Coimbatore v. Lakshmi Technology & Engineering Indus Ltd. [reported in 2011 (23) S.T.R. 265 (Tri. - Chennai)] and also the decision in the case of Navaratna S.G. Highway Property Private Limited v. CST [reported in 2012 (28) S.T.R. 166 (Tri. - Ahmd.)] and held that without construction of the building, the renting of immovable property services cannot be provided and that therefore, construction service is an eligible service for credit for providing output service of renting of immovable property.*
>
> *11. In our considered view, the conclusion of the Tribunal is well founded, as construction service is an eligible service for credit for providing output service of renting of immovable property and without construction of the building, the renting of immovable property cannot be provided. We are also of the opinion that there is no error in the decision taken by the Tribunal."*

18. *The aforesaid decision of the Madras High Court makes reference to the decision of the Tribunal in Navaratna S.G. Highway. The said decision in Navaratna S.G. Highway, after placing reliance upon a decision of the Andhra Pradesh High Court in Sai Sahmita Storages, observed as follows :-*

> *"3.2 The definition of 'inputs' is limited to the definition of 'input services' as can be seen from the definition given above. Credit of duty paid on inputs is available when the inputs are used for providing an 'output service'. Therefore, there is a need*

to say that the inputs have been used for providing an 'output service'. In the case of 'input service', the definition includes input services used by a provider of taxable service for providing an output service. Therefore the definition of input and input service are parimateria as far as the service providers are concerned. That being the position, the decision of the Hon'ble High Court of Andhra Pradesh would be applicable to the present case. In that case also, the Hon'ble High Court took the view that without use of cement and TMT bars for construction of warehouse assessee could not have provided 'storage and warehousing service'. In this case also, without utilizing the service, Mall could not have been constructed and therefore the renting of immovable property would not have been possible. The issue involved is squarely covered by the decision of the Hon'ble High Court of Andhra Pradesh. Since the service tax demand itself is not sustainable, the question of imposition of penalty does not arise. The appeal is allowed with consequential relief to the appellants."

19. *At this stage it will also be appropriate to refer to a decision of the Delhi High Court in Vodafone Mobile Services. The High Court examined whether emergence of immovable structure at intermediate stage is a criterion for denial of Cenvat credit. After referring to the decision of the Andhra Pradesh High Court in Sai Sahmita Storages, the Delhi High Court observed :-*

"71. Sai Sahmita Storages (P) Limited, is, in our opinion, a decision that held that a plain reading of the definition of Rule 2(k) would demonstrate that all goods used in relation to manufacture of final product or for any other purpose used by a provider of taxable service for providing an output service are eligible for CENVAT Credit.

72. In the present case, it is not in dispute that the appellant is a taxable service provider providing passive telecommunication service. Therefore, the assessee is entitled for input credit on the weight of judicial authority discussed above. It is also clear

> *that several High Courts in different contexts have taken a view that credit of excise duty and service tax paid would be available irrespective of the fact that inputs and input services were used for creation of an immovable property at the intermediate stage, if it was ultimately used in relation to provision of output service or manufacturing of final products."*
>
> ***20.*** *In view of the aforesaid decisions of the High Courts, there is no manner of doubt that Cenvat credit availed by the appellant on inputs, inputs services and capital goods service used for construction of the Mall, which was ultimately let out could not have been denied to the appellant. The findings to the contrary recorded by the Commissioner cannot be sustained and are, accordingly, set aside."*

24. In view of the above discussions, we are inclined to allow the Cenvat credit of input services as availed by the Appellant for construction of immovable property which was further let out to various customers.

25. As regards the eligibility of Cenvat credit on event management services, we find that Rule 2(l) of the Cenvat Credit Rules, 2004 doesn't exclude any such service from the eligibility of availment of Cenvat credit as these expenses have been incurred in the course of furtherance of business and are thus business promotion expenses and the same is eligible as Cenvat credit in our considered view.

26. Thus, we conclude as below:

a. Applicability of service tax on refundable security deposit collected by the Appellant from its customers- Not Applicable.
b. Applicability of service tax on reimbursement of expenses from its customers on account of water, electricity and diesel expenses incurred for provision of services- Not Applicable
c. Applicability of service tax on termination charges collected from customers for early termination of lock in period of lease- Not applicable.

d. Eligibility of Cenvat credit of works contract services and other services for construction of immovable property and Cenvat credit on event management services for promotion of business of the Appellant- Cenvat credit eligible.

Thus all four appeals are allowed with consequential relief to the appellant as per law.

(Order pronounced in the open court on 08.07.2022)

(P.K.CHOUDHARY)
MEMBER (JUDICIAL)

(P.V.SUBBA RAO)
MEMBER (TECHNICAL)

sm