IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL Nos. ST/71142-71144/2016-CU[DB]

(Arising out of Order-in-Original No. KNP-EXCUS-000-COM-044-16-17 dated 29/08/2016 passed by Commissioner of Customs, Central Excise & Service Tax, Kanpur)

Smt. Krishna Ramchandani,

Smt. Neeta Ramchandani &

Smt. Shobha Ramchandani **Appellants**

Vs.

Commissioner of Customs, Central Excise

& Service Tax, Kanpur **Respondents**

Appearance:

Shri Dharmendra Srivastava (C.A.) for Appellant
Shri Shiv Pratap Singh (Dy. Commr.) AR for Respondent

CORAM:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 12/12/2018
Date of Decision & Pronouncement : 30/01/2019

FINAL ORDER NOs. - **70185-70187/2019**

Per: Archana Wadhwa

All the three appeals are being disposed of by a common order as they arise out of the same impugned order passed by Lower Authorities vide which demand of service tax stands confirmed against all the appellants alongwith confirmation of interest and imposition of penalties, under the category of 'Renting of Immovable Property'.

2. As per facts on record, the appellants are renting property to hotels at monthly rents. The rent originally agreed upon by the hotel was not being paid and they were paying lesser amount.

3. Revenue by entertained a view that renting of property to hotels was covered under the category of 'Renting of Immovable Property Service' for the period 01/07/2009 to 30/06/2012 and 'Other than Negative List Service' for the period from 01/07/2012 to 30/06/2014. Accordingly, proceedings were initiated against the appellants alleging deliberate and willful suppression with intent to evade payment of tax in respect of rent received from the hotels and proposing confirmation of service tax. Inasmuch as they crossed threshold limit of Rs.10 lakhs out of year, the same stands confirmed against the assessee.

4. The learned advocate appearing for the appellants has taken a categorical stands that renting of the property to hotel is exempted from payment of service tax under Explanation 1(d) of Section 65 (105)(zzzz) of the Finance Act, 1994 as held by the Tribunal in the case of M/s Paradise Mehak Properties Pvt. Ltd. vs. Commissioner of

Central Excise & Service Tax, Delhi 2014-TIOL-2156-CESTAT, Delhi as also in the case reported 2017 (6) G.S.T.L. 350 (Tri.-Del.). It has been further held so in the case of M/s Jai Mahal Hotels Pvt. Ltd. vs. Commissioner of Central Excise, Jaipur 2014-TIOL-992-(CESTAT-Del.) as also in the case of Ambience Construction India Ltd. vs. Commissioner of Service Tax, Hyderabad-2013-(31) S.T.R. 343 (Tri.-Bang.). He submits that if the rent receipts from the hotels are deducted, they would remain within the threshold of exemption limit.

5. In view of the above, we set aside the impugned order and remand the matter to Original Adjudicating Authority for consideration of the said plea of the assessee in the light of the law declared by the Tribunal in the above referred cases. As other issues of quantification etc. are also involved, the appellants would be at liberty to place their arguments before the Adjudicating Authority for which purpose they would be afforded an opportunity.

6. Appeals are allowed by way of remand.

(Pronounced in Court on – 30/01/2019)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

Sd/-
(Archana Wadhwa)
Member (Judicial)

Lks