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

APPEAL No. ST/70017/2016-CU[DB]

(Arising out of Order-in-Appeal No. 375-ST/APPL-AGRA/LKO/2015 dated 29/09/2015 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Lucknow)

M/s Mayur Tourist Complex **Appellant**

Vs.

Commissioner of Central Excise & Service Tax, Agra **Respondent**

Appearance:

Absent on Call, for Appellant
Shri Sandeep Kumar Singh, Deputy Commissioner (AR), for Respondent

CORAM:

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

Date of Hearing & Date of Decision : 28/02/2019

FINAL ORDER NO. **70489/2019**

Per: Archana Wadhwa

On matter being called, nobody appeared on behalf of the appellant. Further from the records we note that the notice of hearing sent to the appellant stands received back by the Postal Authorities with remarks "unable to trace". Accordingly, we have gone through the impugned orders and have heard learned A.R. appearing on behalf of the Revenue.

2. It is seen that the appellant is operating a luxury hotel and engaged in providing various services like accommodation, restaurant, mandap keeper, renting of

immovable property, beauty treatment as also the construction of residential complex. He was registered with the Service Tax Department for such services and was filing ST-3 Returns.

3. The scrutiny of the appellant's records maintained at the luxury hotel being run by them, it was found that they were providing swimming pool facilities to their members on monthly subscriptions ranging from Rs.1,000/- to Rs.3,000/-, for which the receipts were also being issued, as token of received amount. Revenue entertained a view that such an activity of the assessee leads to providing service under the category of "Club or Association Services" and the appellant is required to pay Service Tax on the same.

4. Accordingly, proceedings were initiated against them by way of issuance of a Show Cause Notice dated 21/10/2013 raising demand of Service Tax amounting to Rs.2,37,009/- for the period 01/04/2008 to 31/03/2012 i.e. by invoking the extending period of limitation.

5. The Show Cause Notice culminated into an order passed by the Original Adjudicating Authority upholding the demand along with confirmation of interest and imposition of penalties. Commissioner (Appeals) also rejected the assesses's appeal.

6. It is seen that the assessee relied upon the Hon'ble Jharkhand High Court's decision in the case of Ranchi Club Ltd. *Versus* Commissioner of Customs, Central Excise &

Service Tax, Ranchi Zone & Others reported as 2012 (26) STR 401 (Jharkhand) and contended that the Club & Association Service has been held to be *ultra-vires* by the Hon'ble High Court. The Appellate Authority distinguished the said decision of the Hon'ble High Court of Jharkhand by observing that the Club before the High Court was Member's Club whereas the appellant in the present case is running a propriety club and as such the declaration of law by the Jharkhand High Court would not be applicable to them.

7. The appellant also assailed the demand on the point of limitation by submitting that there was no suppression on their part and the issue involved was a *bona-fide* legal issue of interpretation. The Commissioner (Appeals) did not agree with the said plea of the assessee and upheld the order.

8. We are of the view that the appeal cannot be disposed on the point of limitation itself, inasmuch as, the demand stands raised by invoking the extended limitation period. The disputed issue was an interpretational issue and in the light of the Hon'ble Jharkhand High Court's order the assessee could have entertained a *bona-fide* belief that the activity is not taxable, we find that the entire figures were collected by the Revenue from the records maintained by the assessee. In such a scenario, no *mala-fide*, with a motive to evade Service Tax can be attributed to the appellant. As such, we are of the view that the demand is hopelessly barred by limitation. The

same is accordingly set aside and appeal allowed with consequential relief to the appellant.

(Dictated in Court)

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

Sd/-
(Archana Wadhwa)
Member (Judicial)

Ansari