CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH – COURT NO.I

Service Tax Appeal No.70035 of 2018

(Arising out of Order-in-Appeal No.276/ST/APPL-KNP/LKO/2017 dated 10/10/2017 passed by Commissioner (Appeals), Customs, GST & Central Excise, Lucknow)

Amit Resorts .....**Appellant**

Chameli Bagh, Agra Road, Firozabad

VERSUS

Commissioner (Appeal), Customs, GST & Central Excise, Lucknow .....**Respondent**

APPEARANCE:

Ms. Stuti Saggi, Advocate for Appellant
Shri P.K. Dubey, Authorized Representative for Respondent

CORAM :
Hon'ble Mrs. ARCHANA WADHWA, MEMBER (JUDICIAL)
Hon'ble Mr. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO.71446 / 2019

DATE OF HEARING : 25 July, 2019
DATE OF DECISION : 25 July, 2019

ARCHANA WADHWA

After hearing both the sides duly represented by learned Advocate, Ms. Stuti Saggi appearing on behalf of the appellant and learned AR, Shri P.K. Dubey appearing on behalf of the Revenue, we find that the service tax demand stands confirmed against the appellant under the category of 'Mandap Keeper's Services'. It is seen that during the period relevant for the purposes of the present appeal, the appellant was availing the benefit of Small Scale Exemption Notification No.6/2005-ST dated 01 March, 2005, inasmuch as the value of the services provided by them were falling within the exemption limit. Based upon a specific intelligence Revenue undertook investigations and visited the appellant's premises as also the premises of one M/s Hotel Garg on 24 February, 2015. It was found that all the bookings were being done from the premises of M/s Hotel Garg under the cover of invoices being issued by the said Hotel Garg. The booking slips as also payment receipts etc. belonging to the present appeallant and M/s Hotel Garg were found to be identical with a logo 'G' subscribed on the same. The records were also being maintained at the premises of M/s Hotel Garg.

2. From the above, Revenue entertained a view that inasmuch as the present appellant M/s Amit Resorts were providing services under the brand name of M/s Hotel Garg, the benefit of SSI Exemption Notification cannot be availed by them in terms of proviso to Para 1 of the Notification. Accordingly, by way of issuance of a show cause notice dated 08 April, 2015, demand of service tax for the period 2009-10 to 2014-15 was raised against them. The same stands confirmed by the Original Adjudicating Authority to the tune of Rs.4,15,523/- along with confirmation of interest and imposition of penalty. Appeal against the said order did not succeed before Commissioner (Appeals) and hence the present appeal.

3. The appellants have not denied the fact that all the services were being provided under the booking slips, invoices and payment receipts of M/s Hotel Garg, which was also located in Firozabad. The said documents were using a letter 'G' designed in a particular font and style. Admittedly

'G' is not the family name or surname so as to enable both the service providers to use the same as rightly pointed out by the Lower Authorities. 'G' is nothing but a brand name of Hotel Garg which indicates a connection between M/s Hotel Garg with the general public in question. The mere fact that the partners of M/s Hotel Garg as also M/s Amit Resorts are related being members of the same family will not change the situation inasmuch as M/s Hotel Garg has been using the said brand name from 1999 onwards when the same was started. It is thereafter in 2007 when present appellant came into existence, they started using the same brand name. The appellant's reliance on the Tribunal decision in the case of Pethe Brake Motors Ltd V/s Commissioner of Central Excise, Pune reported at 2005 (179) E.L.T. 57 (Tri.-Mumbai) as upheld by the Hon'ble Supreme Court reported in 2015 (320) E.L.T. A341(S.C.) would not apply to the facts of the present case inasmuch as in that decision 'Pethe' was the surname of the family and as per the decision could be used by all the family member. The same was not a brand name or trade name. However, in the present case M/s Hotel Garg is not using expression 'Garg' which is their family surname but a specifically designed 'G' is being used by them thus indicating a connection between Hotel Garg and general public. As such we are of the view that the Lower Authorities have rightly held that the appellant was using the brand name of another person while providing services and as such was not entitled to SSI exemption benefit.

4. However, we note that the demand stands raised for the period 2009-10 onwards by invoking the longer period of limitation. The issue involved is a *bona fide* issue of interpretation and there being no positive evidence

indicating any *mala fide* on the part of the assessee, we are of the view that the demand is required to be restricted to the normal period of limitation. For the same reason, we find no justification for imposition of penalties upon the assessee.

5. In view of the forgoing, matter is remanded to the Original Adjudicating Authority for re-quantification of the demand falling within the limitation period. Penalty is however, set aside, in *toto*.

(Dictated and Pronounced in open Court)

Sd/-
(Archana Wadhwa)
Member (Judicial)

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

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