CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT No. I

Service Tax Appeal No. 70103 & 70104 of 2017-[DB]

[In Service Tax Appeal No.70103 of 2017]
(Arising out of Order-in-Appeal No.129-130/ST/APPL/KNP/2016 dated 27/10/2016 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Kanpur)

M/s Orient Club Pvt. Ltd., **.....Appellant**

(National Highway, 2 Kalpi Road, Sachendi, Kanpur)

VERSUS

Commissioner of Central Excise, **....Respondent**

(Kanpur)

WITH

Service Tax Appeal No.70104 of 2017
(Arising out of Order-in-Appeal No.129-130/ST/APPL/KNP/2016 dated 27/10/2016 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Kanpur)

M/s Orient Club Pvt. Ltd., **.....Appellant**

(National Highway, 2 Kalpi Road, Sachendi, Kanpur)

VERSUS

Commissioner of Central Excise, **....Respondent**

(Kanpur)

APPEARANCE:

A letter on record, for the Appellant
Shri Shiv Pratap Singh, Deputy Commissioner Authorised Representative for the Respondent

CORAM: **HON'BLE SMT. ARCHANA WADHWA, MEMBER (JUDICIAL)**
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NOs71650-71651 / 2019

DATE OF HEARING : 20 August, 2019
DATE OF PRONOUNCEMENT : 30 August, 2019

PER: ARCHANA WADHWA

On matter being called, our attention stands drawn to the advocate's letter on record, praying for disposal of both the appeals on the basis of the submissions made by him. Accordingly, we have heard the learned Authorised Representative appearing for the revenue and have gone through the impugned orders.

2. It is seen that the appellant is registered with the Service Tax Department under various categories. Demand of Rs.45,506/- stands raised against him by way of show cause notice dated 08.07.2014 for the period 2012-13 and demand of Rs.68,086/- stands raised by way of show cause notice dated 07.03.2015 for the period 2013-14 and 2014-15 on the ground that during the said period the appellants have provided 'Restaurant Services' which were liable to service tax. The said show cause notice stands confirmed by the Original Adjudicating Authority.

3. The appellant, through their counsel has raised the following contentions:-

> "A. Appellant, has let out a restaurant with all facilities to M/s Rewant Hospitality Pvt. Ltd. vide lease deed dated 2nd April, 2012 on which it has paid tax under renting service. Copy of lease deed is enclosed with appeal set. Appellant is not running a restaurant and is paying due service tax on rental income under Renting of Immovable Property Service.
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> B. Without prejudice to what has been stated above it is submitted that sale of alcohol, packaged food items and tobacco are transactions of saleon which VAT has been paid and will not attract service tax. TRU Circular issued in Fl.No.334/3/2011-TRU, dated 28-2-2011 & Circular No. 173/8/2013-S.T., dated 07-10-2013 are relied on in support. Prior to 01.07.2012, sale of goods was exempted vide Notification No.12/2003-ST dated 20.06.2012 & w.e.f. 01.07.2012, excluded from definition of 'service' u/s 65B (44) of Finance Act, 1994 as also trading of

goods is in the negative list. Hence, demand on sale of alcohol, packaged food items and tobacco should be set aside.

C. Extended period of limitation should not be invoked as appellant regularly filed ST-03 returns paying due tax hence, there was no suppression. Decision of M/s. Rudra Infra Developers Vs. CCE, Kanpur-Final Order No.70034/2019 dated 08.01.19 in ST/70130/2015-CU[DB] relied on.

D. Without prejudice to foregoing submissions, even otherwise, it is submitted that appellant has paid service tax demand under protest for period 2013-14 to 2014-15 (upto Sep.14) before issue of show cause notice and communication of order. Therefore, penalties u/s 77 and 78 should be set aside."

4. As the plea of the assessee that they were not running the restaurant and have paid the tax under the category of "renting of immovable property" requires factual verification, which can be verified by Original Adjudicating Authority. Accordingly, we deem it fit to set aside the impugned order and remand both the appeals to Original Adjudicating Authority for fresh decision. The appellant is at liberty to raise all the grounds before the Original Adjudicating Authority including the plea of limitation. Needless to say that for the above purpose the appellant would be given an opportunity to put forth their case.

Both the appeals are allowed by way of remand.

(Pronounced in open court on- 30 August, 2019)

(Archana Wadhwa)
Member (Judicial)

(Anil G. Shakkarwar)
Member (Technical)

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