CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Service Tax Appeal No. 430 of 2009

[Arising out of Order-in-Appeal No. 119/2009 dated 08/04/2009 passed by the Commissioner of Central Excise (Appeals), Mangalore.]

Hotel Moti Mahal
Falnir, South Kanara
Mangalore – 575 001.
Karnataka

Appellant(s)

VERSUS

Commissioner of Central Excise and Service Tax,
7TH FLOOR, TRADE CENTRE,
BUNTS HOSTEL RD.,
MANGALORE – 575 003.
KARNATAKA

Respondent(s)

Appearance:

Smt. VANI. H, Advocate
NO.73, (OLD NO.17/A) MILLERS ROAD,
BENSON TOWN,
BANGALORE – 560 046.
KARNATAKA

For the Appellant

Smt. C. V. Savitha, Superintendent (AR)

For the Respondent

Date of Hearing: 25/02/2020
Date of Decision:29/05/2020

CORAM:

HON'BLE SHRI S.S GARG, JUDICIAL MEMBER
HON'BLE SHRI P. ANJANI KUMAR, TECHNICAL MEMBER

Final Order No. 20347/2020

Per : P. ANJANI KUMAR

Appellants are restaurant having banquet halls. Appellants sometimes charge only for the food served and do not charge any rentals for the banquet halls. Departmental audit disputed this and have advised the appellants to pay applicable service tax on such food bills where food was served in the banquet halls, the appellants have paid the amount of Rs.6,11,514/-. The appellants are representing to the Commissioner of Customs and Central Excise, Mangalore, who clarified by letter dated 2.8.2007 that service tax is required to be paid when there was an official, social or business function. Based on the clarification, the appellants have preferred a refund claim for Rs.5,92,701/- stating that the same was in respect of food served on which VAT was paid. A show-cause notice was issued and by Order-in- Original dated 11.3.2008, Asst. Commissioner of Central Excise, Mangalore rejected the refund claim. An appeal filed by the appellant was also rejected by Commissioner (A) by the impugned Order-in-Appeal No.119/2009 dt. 8.4.2009.

2. The crux of the argument of the department was that any prudent man can understand that without any function no person can stay in the hotel for the entire day and have mid-morning tea with biscuit, buffet lunch, evening tea with biscuit and dinner; though no separate rent was collected for the function hall, charges were recovered for use of LCD projector, laptop, white board, mike system, podium, etc., and service charge on the same was paid; organization of function is evident by the usage of LCD projector, etc., and the rent for the function hall is inbuilt in the value of the food served in the function; the temporary occupation throughout the day is to be construed as social function; and therefore, liable to pay service tax and tax was correctly paid after allowing permissible deduction. The lower authority also found that the clarification given by the Commissioner was based on incomplete information given the appellant and that the mandap or the banquet halls were let out for temporary occupation and some official, social or business function were organized. The appellate authority has upheld the reasoning given by the lower authority. The learned Authorized Representative has reiterated the same.

3. Having gone through the facts of the case and the rival contentions, we find that Revenue has proceeded on certain surmises and conjectures. The two major surmises were that with the usage of LCD display, etc., it is evident that the banquet halls were let out temporarily for a day and that the charges for the same are inbuilt into the bill raised by the

appellant towards the food charges and this inbuilt value needs to be treated as consideration towards the 'Mandap Keeper' services provided by the appellant. We are afraid that it is not open to the Revenue to decide the taxability of a new entry merely on the basis of imagination. For any service to be held to be taxable, there should be a service provider, service recipient and consideration for the service. It cannot be imagined that such consideration was inbuilt. It is incumbent upon Revenue to show such consideration in quantifiable terms in order to levy service tax, though on a discounted value. This becomes more important looking into the fact that the appellants have discharged VAT on the food supplied by them and have also discharged service tax on the items like LCD projector, etc., allowed to be used. Revenue could not place any proof in the form of a bill, etc., to substantiate the allegation that the banquet halls were rented out for a consideration. Therefore, we are of the considered opinion that the department's stand is not substantiated so far as the reduction of refund is concerned on merits. Therefore, we find that the Order-in-Appeal is liable to be set aside.

4. In view of the above, the appeal is allowed with consequential relief, if any, as per law.

(Order was pronounced in Open Court on **29.05.2020.**)

(S.S GARG)
JUDICIAL MEMBER

(P. ANJANI KUMAR)
TECHNICAL MEMBER

RV