CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
CHENNAI

Appeal No.ST/215/2012 & ST/216/2012

[Arising out of Order-in-Appeal No.9 and 10/2012 (M-ST) dt. 12.01.2012 passed by Commissioner of Central Excise (Appeals), Chennai]

Commissioner of Service Tax,
Chennai — Appellant

Versus

1. Rani Meyyammai Hall
2. Raja Muthiah Hall — Respondent

Appearance :

Shri A. Cletus, ADC (AR)
For the Appellant

Ms. S. Vishnupriya, Advocate
For the Respondent

CORAM :

Hon'ble Ms. Sulekha Beevi, C.S., Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of hearing / decision : 24.09.2018

FINAL ORDER No. 42491-42492 / 2018

Per Bench

The facts of the case are that M/s.Rani Meyyamai Hall and M/s.Raja Muthiah Hall, (the respondents herein) owned by Wellingdon Charitable Trust, are registered with department for rendering taxable services as "Mandap Keeper". Pursuant to audit conducted of both the respondents, it appeared that at the time of booking of halls for functions etc., amounts have been collected as rental amount from persons who book the hall and in addition, an amount as "donation" has also been collected in the name of Wellingdon Charitable Trust; that service tax has been discharged by the respondents only on the amount collected as rent and other charges collected after performance of functions; that however service tax has not been paid on the amount collected as "donation" on the ground that donations are made voluntarily by persons who book the hall for charitable purposes carried on by the Trust and that such amounts collected are not connected with the rents for provision of the hall. Accordingly, Show Cause Notice No.234/2008 dt. 22.09.2008 was issued to M/s.Rani Meyyamai Hall (hereinafter referred to as 'Rani') proposing demand of service tax on the "donations" for the period 02.04.2003 to 30.11.2007 amounting to Rs.28,83,660/- and Education Cess and Secondary & Higher Education Cess Rs.52,878/- with interest thereon and imposition of penalties under Section 76, 77 & 78 of the Finance Act, 1994. In adjudication, the original authority vide an order No.82/2009 dt.30.11.2009 confirmed the demand of tax / cess as proposed in the notice with interest and imposed equal penalty under Section 78 of the Act.

2. So also, a SCN No.232/2008 dt. 22.09.2008 was issued to Raja Muthiah Hall (hereinafter referred to as 'Raja') proposing similar demand of service tax of Rs.25,19,918/- and Education Cess / consequential Higher Education Cess of Rs.45,537/, with interest thereon and imposition of penalties under Section 76,

77 & 78 of the Act. In adjudication, vide an order No.81/2009 dt.30.11.2009 , the original authority confirmed demand of service tax / cess as proposed in the SCN with interest thereon and also imposed equal penalty under Section 78 ibid.

3. Appeals were filed against the aforesaid two orders of the original authority. The Commissioner (Appeals) vide combined Orders No.9 and 10/2012 (M-ST) dt. 12.01.2012 (impugned order) held that the department was seized of the matter as early as in 2004 itself, hence extended period could not be invoked in both the cases. On merits, the lower appellate authority held that service tax is payable by appellant on Mandap keeper service, including value of “donations”. The lower appellate authority also held that amount of portion being a fixed amount irrespective of person hiring the mandap defies logic; that a donation being voluntary payment and never to be a fixed amount always; hence amount collected in the guise of donation is nothing but rent charged for the mandap hired and based on these findings and conclusions lower appellate authority has restricted the demand to the normal period of limitation i.e. from 23.09.2007 to 30.11.2007 and also set aside penalty imposed under Section 78 in both the cases. Revenue is aggrieved by the impugned order and have filed these two appeals, namely ST/215/2012 in respect of Rani Meyyamai Hall and ST/216/2012 in respect of Raja Muthiah Hall.

4. Today when the matter came up for hearing, on behalf of the department, Ld. A.R Shri A. Cletus submits that respondents had failed to disclose the collection of donation to the department either by disclosing it in the ST-3

returns or by any other manner. Ld. A.R also mentioned that just because of the letter sent by Superintendent dt. 14.07.2004 to the appellant that donations collected by respondents should be assessed to service tax cannot be used as a defence for non-invocation of extended period. For these reasons, the orders of the Commissioner (Appeals) setting aside the demand for extended period of limitation and also setting aside the penalty under Section 78 is unjustified and prayed the same may be set aside.

5. On the other hand, on behalf of the respondent Ld. Advocate Ms. S. Vishnupriya pointed out that Commissioner (Appeals) has gone into all the aspects of the matter and only then arrived at the conclusion that extended period of limitation cannot be invoked. She also relies upon the case law of Tribunal in the case of *CCE Pune Vs Central Panchyat* - 2015 (37) STR 1038 (Tri.-Mumbai).

6. Heard both sides and have gone through facts.

7.1 It is clear from para 5.1 of the impugned order that vide a letter dt. 14.07.2004, the Superintendent of Central Excise, Service Tax Cell had directed the respondents to discharge service tax liability for the donations received by them for the period 1999-2000 to 2002-2003. There appears to have been no further follow up thereafter in the matter by the department. It is pertinent to note that subsequently both the units were visited twice by the internal audit of the Service Tax Commissionerate during which time also the point of dispute earlier communicated by the Superintendent in their letter dt. 14.07.2004 was not followed up. Only in the third audit conducted in 2007 did the disputed amount re-emerge and the SCNs have finally been issued on 22.09.2008.

7.2 Quite obviously, there has been considerable laxity on the part of the department. Nothing prevented them from issuing SCNs in 2004 itself when after collecting information, appellants had been advised by the department that service tax liability is required to be paid on the amount of “donation”. We are also unable to fathom why such a contentious issue was not again examined in two subsequent audits.

7.3 In the circumstances, we are not able to find any infirmity with the orders of the Commissioner (Appeals) that extended period cannot be invoked; that in the case of SCN No.234/2008 dt. 22.09.2008 in respect of Rani Meyyammai Hall, the demand for the period from 23.09.2007 to 30.11.2007 alone will survive; that similarly, in the case of SCN No.234/2009 dt. 22.9.2008 in respect of Raja Muthiah Hall the demand only for the period 23.09.2007 to 30.11.22007 alone will survive. For the same reasons, we do not find any fault with the decision of the Commissioner (Appeals) to set aside penalty under Section 78. In the event, we do not find any merit in the appeals filed by the department for which reason they are dismissed.

(operative part of the order pronounced in court)

(Madhu Mohan Damodhar)
Member (Technical)

(Sulekha Beevi, C.S)
Member (Judicial)

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