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

ST/155/2008

(Arising out of Order-in-Appeal No. 3/2008 (M-ST) dated 26.02.2008 passed by the Commissioner of Central Excise (Appeals), Chennai)

M/s. MGM Entertainments (P) Ltd. — Appellant

Vs.

CST, Chennai — Respondent

Appearance

Shri N.K. Bharath Kumar, Consultnat,
for the Appellant

Shri S. Govindarajan, AC,
for the Respondent

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

Date of Hearing / Decision: **21.08.2017**

Final Order Nos. 41916/**2017**

Per Bench

The appellants are engaged in the business of Fast Food Restaurant on Franchisee basis as per the Franchise Agreement dated 05.04.1999 entered with M/s. Marrybrown Fried Chicken, Malaysia, Johor. On scrutiny of Balance Sheet

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for the year 2003-04, it was noticed that they have not paid service tax during the relevant period. They have not registered under Service Tax Department for the Franchise services. A SCN dated 04.08.2006 was issued proposing demand of service tax along with interest and proposing imposition of penalties under various sections. On adjudication the original authority confirmed the demand of service tax to the tune of Rs. 10,78,364/- along with interest and imposed penalty under Section 76 and 77 of the Finance Act, 1994. On appeal, the Commissioner (Appeals) upheld the order of the original authority. Hence this appeal.

2. Ld. Consultant Shri N.K. Bharath Kumar appeared on behalf of the appellant and submitted that the liability to pay service tax under reverse charge mechanism got crystallized only after insertion of Section 66A under Finance Act, 1994 with effect from 18.04.2006 as held by the Hon'ble Supreme Court in the case of *Indian National Shipowners Association* – 2009 (13) STR 235 (Bom.), which was upheld by the Hon'ble Supreme Court reported in 2010 (17) STR J57 (SC). Therefore, he prayed that the impugned order may be set aside in toto.

3. Heard both sides and gone through the submissions made by both sides and perused the records.

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4. The issue to be decided is whether the appellant satisfy the fourth condition stipulated in the definition of Franchise service as it stood at the relevant period or otherwise. Franchise was defined under clause (47) of Section 65 as under:-

> 'Franchise' means an agreement by which-
>
> i) franchisee is granted representational right to sell or manufacture goods or to provide service or undertake any process identified with franchisor, whether or not a trade mark, trade mane or logo or any such symbol, as the case may be, is involved.
>
> ii) the franchisor provides concepts of business operation to franchisee including know-how, method of operation, managerial expertise, marketing technique or training and standards of quality control except passing on the ownership of all know-how to franchisee;
>
> iii) the franchisee is required to pay to the franchisor, directly or indirectly, a fee; and
>
> iv) the franchisee is under an obligation not to engage in selling or providing similar goods or services or process, identified with any other person"

We find that the period involved is prior to 18.4.2006 on which date Section 66A came to be introduced in the Finance Act, 1994. The issue whether the assessee is liable to pay service tax on the amount paid to foreign franchisor for the period under dispute stands settled in favour of the assessees in the judgment of *Indian National Shipowners Association* – (supra), which was upheld by the Hon'ble Supreme Court

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reported in 2010 (17) STR J57 (SC). It is seen that for the period from 01.-07.03 to 15.06.2005 the law laid down by the Indian Ship-owners Association (supra), will prevail, since the appellants have paid the franchisee fee to the foreign franchisor, hence no tax liability will arise for that period.

5. Following the above judgment, the impugned order is set aside and the appeal is allowed with consequential relief, if any, as per law.

(Operative portion of the order was pronounced in the open court)

Sulekha Beevi

(Madhu Mohan Damodhar)
Member (Technical)

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

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