CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

COURT HALL - I

Service Tax Appeal No.42604 of 2014

(Arising out of Order-in-Appeal No. 68/2014 dated 28.8.2014 passed by the Commissioner of Central Excise (Appeals), Madurai)

M/s. Taj Madurai Ltd. **Appellant**
40, TPK Road
Pasumalai, Madurai – 625 004.

Vs.

Commissioner of GST & Central Excise Respondent
Central Revenue Building
Lal Bahadur Shastri Marg
Bibikulam, Madurai – 625 002.

<u>APPEARANCE:</u>

Ms. Saptarshi, Advocate for the Appellant (Virtual Mode)
Shri Harendra Singh Pal, Authorized Representative
for the Respondent

CORAM

Hon'ble Shri P. Dinesha, Member (Judicial)
Hon'ble Shri M. Ajit Kumar, Member (Technical)

Final Order No. 40724/2024

Date of Hearing : 21.03.2024
Date of Decision: 20.06.2024

Per P. Dinesha,

Facts of the case as could be gathered from the impugned order and which are clearly undisputed, are that the Appellant-taxpayer had entered into an Agreement with M/s. Oriental Hotels Ltd. ('OHL' for short) by which landed property belonging to the appellant comprising of buildings on 43 acres of land was given under 'Licence Agreement' for being run as a deluxe class hotel for a period of 25 years from 01.7.1990. In consideration, the said OHL would pay the Appellant herein a license fee calculated at 20% of annual sale from the operations of the hotel at the said premises. It is the case of the Revenue that the scrutiny of the appellants record revealed that the appellant had received Rs.4,76,30,595/-from OHL for the period 01.6.2007 to 31.03.2011 as license fee; the same was received to be for rendering service and hence liable to service tax under the category of Renting of Immovable Property Service. It was thus assumed that the above service was not disclosed by the Appellant in their ST-3 returns, which prompted the issuance of a Show Cause Notice dated 30.9.2013. It appears that the taxpayer filed a detailed reply to the above notice denying rendering of any service or their liability to service tax as contemplated in the above Show Cause Notice, but however, not satisfied with the reply, the original authority *vide* Order in Original No.51/2013 dated 30.9.2013 confirmed the demands with interest along with penalty, as proposed.

It appears that the taxpayer preferred an appeal against the above demands raised against it before the first appellate authority. The first appellate authority as per impugned Order in Appeal No. 68/2014 dated 28.8.2014 also upheld the demands confirmed in the original order, thereby rejecting their appeal and it is against this order that the present appeal has been filed before us by the taxpayer.

2. The learned counsel Ms. Saptarshi appeared for the appellant and Shri Harendra Singh Pal, learned authorized representative appeared for the respondent.

3. We have carefully considered the rival contentions, and we have also gone through the documents placed on record as well as the orders of Tribunal relied upon during the course of arguments. We find after hearing both sides that the only issue to be decided by us is, "whether the activity undertook by the appellant was a service liable to be taxed under the category of Renting of Immovable Property Service as confirmed by the authorities"?

4. After going through various orders of Tribunal in the orders referred to and relied upon by the learned Advocate, we note that similar issue has been decided in favour of the taxpayer, the latest of such orders being in the case of Hotel Shreelekha Regency Ltd. Vs. Commissioner of GST & Central Excise, Chennai vide Final Order No.40554/2023 dated 14.7.2023, this Bench has referred to various earlier orders and finally has concluded at paragraph 7 as under:-

> "7. We have gone through the appeal papers and have heard the opposing parties. We find that it involves a case of the appellant allowing a hotel

> company, as per a written agreement, to run the hotel owned by it at an annual fee equivalent to a certain percentage of the annual turn-over of the said hotel. We agree with Revenue that a principle for interpretation of an activity, is that the nomenclature assigned to it is not decisive of its nature. Further the fact that a method of payment is worked out or calculated in a particular manner, as a consideration for the agreement, as per the convenience of the parties involved, is not in itself determinative of the nature of the service being offered. The method of collection of consideration does not affect the essence of the service so long as a service is actually rendered. We also note Revenue's averments with reference to the coordinate Bench of this Tribunal's judgment in the case of M/s. **Spencer International Hotels Ltd. Vs. CGST & Central Excise** vide Final Order No. 40461 to 40462 of 2023 dated 22.6.2023 that, the amount received by the appellant from M/s. IHCL (company that had taken the hotel for doing business) is not in the nature of rent received for permitting to use the immovable property and that "it is in the nature of joint venture agreement where both parties have agreed to share the profits in particular manner", is not the position in this case as the agreement specifically states that the transaction contemplated by this agreement is neither in the nature of a partnership or a joint venture. We however note that as per the agreement the hotel is run, conducted, maintained and managed by the conductor / operator at the costs, risks, expenses and responsibility of the conductor / operator alone and on a principal-to-principal basis. The appellant has also averred that Section 65(90a) of the Finance Act, 1994 as amended defines 'renting of immovable property' and Section 65(105)(zzzz) of the Finance Act, 1994 defines 'taxable service' provided in relation to renting of immovable property. In terms of Section 65(105)(zzzz) 'hotels' are specifically excluded under clause (d) to Explanation 1 of Section 65(105)(zzzz). The words 'including hotels' used in the Explanation to Section 65(105)(zzzz) of the Finance Act, 1994 while listing out the exclusions from the scope, has to be given its plain meaning."

5. In view of the above clear and categorical finding that there was no liability to service tax under Renting of Immovable Property Service, the demand as upheld in the impugned order calls for interference. Resultantly,

we set aside the order and allow the appeal with consequential benefits, if any, as per law.

(Order pronounced in open court on 20.06.2024)

(**M. AJIT KUMAR**)
Member (Technical)

(**P. DINESHA**)
Member (Judicial)

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