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CUSTOMS. EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
CUSTOMS APPEAL BRANCH

Appeal No. ST/540 /2006 - CU[DB] Date 01/12/2008

Assistant Registrar
C.E.S.T.A.T, New Delhi

To : -
M/S MAJESTIC HOTELS LTD

BHAI BALA CHOWK, FEROZEPUR ROAD,
LUDHIANA.

M/S MAJESTIC HOTELS LTD — Appellant

Vs

C.S.T.LUDHIANA — Respondent

I am directed to transmit herewith a certified copy of **Final order No.** ST/373/08 **CU[DB]** dated 27.11.08

passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(Customs Appeal Branch)

Copy to :
1. Respondent

C.S.T.LUDHIANA

F BLOCK, RISHI NAGAR, LUDHIANA.

2. Adv. / Consult

MR.G.S.BHANGOO

631 (FF), SECTOR 11B, CHANDIGARH

3 S.D.R
4 J.C.D.R.
5 Bar association, CESTAT, New Delhi
6 M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
7 M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New - 3
8 Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9 Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10 Nidheshak publications, I.P.Estate, new Delhi
11 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12 Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai
13 Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15 Office Copy
16 Guard file

Assistant Registrar

(Customs Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

In Service Tax Appeal No.540 of 2006-Customs Br.

[Arising out of Order-in-Appeal No.35/CE/Appl/Ldh/06 dated 31.06.2006 passed by the Commissioner of Central Excise (Appeals), Ludhiana]

Date of Hearing/ Decision:27.11.2008

For approval and signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. P.K. Das, Member (Judicial)

1. Whether Press Reporters may be allowed to see CESTAT (Procedure) Rules, 1982.
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? :
3. Whether Their Lordships wish to see the fair copy of the Order? :
4. Whether Order is to be circulated to the Departmental authorities? : Yes

M/s. Majestic Hotels Ltd. ...Appellant
[Rep. by Shri Vikrant Kakria, Advocate]

Vs.

CST, Ludhiana ...Respondent
[Rep. by Shri Sumit Kumar, DR]

CORAM: **Hon'ble Mr. M. Veeraiyan, Member (Technical)**
Hon'ble Mr. P.K. Das, Member (Judicial)

Final Order No. ST/373/08/Dated:27.11.2008

Per P.K. Das:

Heard both sides and perused the records.

2. After hearing both the sides and on perusal of the records, it is seen that the appellants are providing taxable services of "Mandap Keeper". It

has been alleged that during the period 2004-2005, they have charged "Service Charges" in their Bill at 5%, which was not included in the taxable value.

3. Ld. Advocate on behalf of the appellants submits that 3% relates to breakage charges and 2% tips to the waiters. He fairly submits that the issue has already been decided by the Tribunal in the case of Hotel Mela Plaza Vs. Commissioner of Central Excise, Ghaziabad reported in 2006 (3) STR 563 (Tribunal-Delhi) against the appellant. He submits that the appellants claimed exemption under Notification No.12/2001-ST dated 20.12.2001 as amended, which was not considered by the adjudicating authority.

4. On perusal of the order of the Commissioner (Appeals), we find that the Commissioner (Appeals) observed that there is no evidence on record to suggest that the appellants ever claimed the benefit of the said notification. It is also observed that there is no evidence placed by the appellant for claiming the abatement of 60% of the amount in their bills. The ld. Advocate submits that they had placed the bills to the lower authorities. He drew the attention of the Bench to the copies of the Bills. In our view, the matter is required to be verified in respect of the availment of the benefit of the notification.

5. In view of the above discussion, we uphold the impugned order in so far as the demand of duty in respect of inclusion of the service charges in the taxable value. However, we direct the Adjudicating Authority to

examine the claim of the appellant of entitlement of benefit of exemption notifications on the basis of evidence. We find that the dispute relates to taxable value and the penalty under Section 78 of the Act is not sustainable and penalty under Section 76 of the Finance Act is reduced to Rs.25,000/-. The appeal is disposed of in the above terms.

Order dictated & pronounced in open court on 27.11.2008.

(M. Veeraiyan)
Member (Technical)

(P.K. Das)
Member (Judicial)

Ckp.