IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. IV

Appeal No. ST/1069,1071/2011 [SM]

[Arising out of Orders in Appeal Nos. 52 & 53/ST/DLH/2011 dated 04.03.2011 passed by the Commissioner (Appeals), Central Excise & ST, New Delhi]

Claridges Hotel Pvt. Limited ….Appellant

vs.

Commissioner of Central Excise & S.T., New Delhi ….Respondent

Appearance:

Rep by. Shri Vikas Khandelwal, CA for the Appellants
Rep by. Shri Dharam Singh, Advocate for the Respondents

CORAM:

Hon'ble Mr. V. Padmanabhan, Member (Technical)

Date of Hearing : 20.01.2017

Date of Pronouncement: 22.02.2017

FINAL ORDER NO. 51910-51911/2017-ST (SMC)

Per V. Padmanabhan

The present appeals are directed against the Orders-in-Appeal No. 52 as well as 53/2011 both dated 04.03.2011.

2. The brief facts of the case are that the appellant is registered with service tax Department for providing various services namely Mandap Keeper, Beauty Parlour, Dry cleaning, Health Club and fitness etc. The

appellant, for payment of Service Tax on Mandap Keeper service, availed the benefit of exemption under Notification No. 01/2006-ST, dated 01.03.2006. The above notification granted abatement for the Mandap Keeper Services rendered to the client along with supply of food in the form of catering. The notification extending such abatement was subject to the condition that Cenvat credit of service tax on input services, used for providing such taxable service, has not been taken under the provisions of Cenvat credit Rules, 2004. During the course of scrutiny of ST returns, the department noticed that the appellant had availed Cenvat credit for making payment of Service Tax. Accordingly, the department took the view that appellant was not entitled to the benefit of abatement under Notification No. 01/2006-ST dated 01.03.2006. Demands for Service Tax was raised for two different periods and these are covered by these two appeals. Appeal No. ST-1069/2011 covered the period October 2007 to March 2008 where in, demand to the extent of Rs 16,41,519/- was raised. Appeal No. ST/1071/2011 deals with the demand raised for the period October, 2006 to September, 2007, wherein demand of Service Tax amounting to Rs 13,48,919/- was raised. Aggrieved by the impugned orders, the present appeals have been filed.

3. In this background, I have heard Shri Vikas Khandewal, C.A. representing the appellant as well as Shri Dharam Singh, Ld. DR representing the Revenue.

4. The ld. Counsel for the appellant submits that the benefit of Notification No. 1/2006-ST has been wrongly claimed by them. He submitted that Cenvat credit amounting to Rs 2,35,478/- has been availed during the period October, 2007 to March, 2008. Likewise, during the period October 2006 to September 2007, the appellant has availed credit to the extent of Rs 2,71,247/-. The ld. Counsel, during the course of hearing submitted that admitting the mistake, the appellant has reversed the entire disputed Cenvat credit as above. However, the applicable interest amounting to Rs. 2,149/- and Rs. 1,855/- have already been paid. He submitted that in view of the total reversal of Cenvat credit availed, their claim of abatement cannot be denied.

5. Admittedly, the appellant availed Cenvat credit during the material time and consequently became ineligible for abatement at the rate of 40% towards the provisions of Mandap Keeper Service as well as for supply of food. However, I note that the appellant has reversed the entire Cenvat credit so availed along with applicable interest. At the time to confirming demands in the two impugned orders, the appellant had not reversed the Cenvat credit availed and consequently the demands made were in order. However, after the reversal, it is to be considered that Cenvat credit was not availed by them *ab-initio*. Such a view has been held by the Hon'ble Supreme Court in the case of *Chandrapur Magnet Wires Pvt. Limited vs. CCE – 1996 (81) ELT 3 (SC).* I find that the decision has been followed by

the Larger Bench of the Tribunal in the case of *Franco Italian Co. Pvt. Limited vs. CCE, Mumbai – 2000 (120) ELT 792 (Tri. LB)*. Further, I find that the Hon'ble Allahabad High Court in the case of *Hello Mineral Water (P) Limited vs. UOI – 2004 (174) ELT 422 (All.),* the benefit of notification stands allowed even by considering the reversal of Cenvat credit on inputs done at the Tribunal stage.

6. By following the above decisions, I find that the appellant is eligible for abated rate of duty in terms of Notification No. 1/2006-ST as they reversed the entire Cenvat credit availed during the material time along with applicable interest. Accordingly, I set-aside the impugned orders denying the benefit of notification and allow the appeals.

[Order pronounced in the open Court on 22.02.2017]

(**V.Padmanabhan**)
Member (Technical)

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