IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-DB

COURT –III

Service Tax Appeal No.ST/548/2011-ST [DB]

[Arising out of Order-in-Appeal No.40 (DKV)/ST/JPR-I/2011 dated 02.02.2011 passed by the Commissioner (Appeals), Central Excise, Jaipur]

M/s.Paradise Investments …Appellant

Vs.

CCE, Jaipur … Respondent

Present for the Appellant : Mr.Vijayan Khongal, C.S.
Present for the Respondent: Mr.Sanjay Jain, D.R.

Coram: HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. B.RAVICHANDRAN, MEMBER (TECHNICAL)

Date of Hearing/Decision: 07/03/2017

FINAL ORDER NO. ________________

PER: S.K. MOHANTY

This appeal is directed against the impugned order dated 02.02.2011 passed by the Commissioner of Customs and Central Excise (Appeal-I), Jaipur. In this case, the appellant provides air-conditioners, generators etc. on rent basis in the hotel owned by M/s. Paradise Mehek Properties Ltd. who have leased out the properties to M/s. Royal Orchid Banjara Pvt. Ltd. The Department entertained a view that such renting of goods should be covered under taxable category of Business Support Service (BSS). The matter was adjudicated vide order dated 01.02.2010, wherein service tax demand of Rs.12,47,314/- was confirmed against the appellant alongwith interest and penalties under Section 76, 77 & 78 of the Finance Act, 1994.

2. On appeal the Commissioner (Appeals) vide the impugned order upheld the adjudged demand. Hence, the present appeal before this Tribunal.

3. The ld. Consultant appearing for the appellant submits that renting of goods, namely air-conditioners, generators etc. does not fall under the definition of BSS, inasmuch as, the definition clearly provides the activities which should be covered under the purview of such taxable category. With regard to the phrase "infrastructural support services and other transaction processes" the ld. Consultant submits that the said phrase has been explained in the explanation clause appended to the definition. It has been provided that office utilities, lounge, reception with competent personnel to handle messages, secretarial services etc. should fall under such phrase for the purpose of levy of service tax. It is his submission that since the equipments were only provided by the appellant on rent and the appellant is no way concerned with managing or providing any infrastructural facilities for running of the hotel, the activity of the appellant should not fall under the purview of BSS.

4. On the other hand, the ld. DR appearing for the Revenue reiterates the findings recorded in the impugned order.

5. Heard both sides and perused the records. "Support service of business of commerce" is defined in Section 65 (104 c) of the Finance Act, 1994 is extracted herein below:-

> *"Support services of business or commerce" means services provided in relation to business or commerce and includes evaluation of prospective customers, telemarketing, processing of purchase orders and fulfillment services, information and tracking of delivery schedules, managing distribution and logistics, customer relationship management services, accounting and processing of transactions, operational assistance for marketing, formulation of customer service and pricing policies, infrastructural support services and other transaction processing"*

6. On perusal of the above statutory definition, it is clear that providing of equipment on rent is not categorized in any of the activities itemized therein. With regard to the infrastructural services and other transaction processes, the explanation appended to the definition clause has provided that infrastructural support service should include the office utilities and other facilities provided for smooth running of the office establishment.

7. We find that the appellant is no-way connected to the business establishment for running the business of the client and is only supplying the equipment on rental basis. Providing of equipment on rent, per se cannot be called infrastructure

support service. The scope of BSS as defined cannot cover simple renting of equipments. We are of the view that service tax demand under such category of service in the case of appellant cannot be sustained. Accordingly, we do not find any merits in the impugned order and after setting aside the same, we allow the appeal in favour of the appellant.

[Dictated and pronounced in the open Court)

(B. RAVICHANDRAN)
MEMBER (TECHNICAL)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Anita