CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R.K.Puram, New Delhi

COURT-II

Date of hearing/decision: 23.05.2017

Appeal No. ST/96/2012-SM
[Arising out of the Order-in-Appeal No. IND/CEX/000/APP/401/11 dated 11/10/2011, passed by the Commissioner (Appeals)-I Customs & Excise, Indore

Apsara Restaurant Appellant

Vs.

C.C.E, Indore Respondent

Appearance:

Present Shri Krishan Garg, consultant for the appellant
Present Mrs Kannu Verma Kumar, DR for the respondent

Coram: Hon'ble Shri Ashok K. Arya, Member (Technical)

FINAL ORDER No 53420/2017

Per; Ashok K. Arya

1. M/s Apsara Restaurant is in appeal against Order in Appeal No. 401 dated 11/10/2011 whereunder Order in Original dated 28/02/2011 confirming the demands of service tax amounting to Rs. 1,45,569/- for the period of April 2008 to March 2009 and of Rs.

1,30,606/- for the period of April, 2009 to March, 2010 have been sustained.

2. The brief facts are that:

i. M/s Apsara Restaurant, the appellant is registered with the service tax Range of Central Excise Division, Indore, as a Mandap Keeper Services provider.

ii. The appellant filed half yearly ST-3 returns for the impugned period of 01/04/2008 to 31/03/2009.

iii. The Department issued two show cause notices to the appellant for the period of April, 2008 to March,2010 demanding service tax denying them benefit of Notification number 12/03- Service Tax dated 20th June, 2003.

iv. The demands issued by the show cause notices were confirmed by the Order in Original dated 28/02/2011 which were sustained by the impugned order in appeal.

v. Therefore, the appellant is in appeal before the Tribunal.

3. Both the sides represented by the Ld. Counsels, CA, Shri Krishan Garg for the appellant and Mrs. Kannu Verma Kumar and Shri G.R. Singh for the Revenue have been heard.

4. The main plea of the appellant is that show cause notice for the period of 2008-2009 is time barred as it has been issued invoking extended period whereas all the facts were in the knowledge of the

Department and there is no willful suppression, fraud, etc on the part of appellant. The appellant is not contesting the demand confirmed for the period of 2009-10

5. After carefully considering the facts and the submissions of both the sides, it appears that the subject matter is covered by the Tribunal's decision in case of *Sayaji Hotels Ltd Vs C.C.E Indore,* 2011(24) S.T.R. 177 (Tri.-Del.) In this regard, the Tribunal in the decision of *Sayaji Hotels Limited* (supra) observes as under:

> 7.2 In this case, the Appellant were filing the six monthly ST-3 returns and it is not the allegation of the department that availment of Notification No. 12/03-S.T. was not declared in the ST-3 returns. When the Department had knowledge that the Appellant are availing of exemption under Notification No. 12/03-S.T. since 1-3-05, it cannot be said that the Appellant suppressed this information from the Department with intent to evade the tax. Thus the criteria for invoking the longer limitation period, as mentioned in the judgments of Hon'ble Supreme Court mentioned in para 7.1 above is not satisfied. Therefore only normal limitation period of one year from the "relevant date" would be available to the Department for recovery of short paid tax and accordingly while the Service tax demands in Appeal No. ST/399/08 and ST/462/2010 are within time, part of demand in Appeal No. ST/374/08 for period prior to March 06 would be time- barred.
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> 8. It has been pleaded that since there is no wilful mis-statement, fraud or suppression of facts with intent to evade the Service tax, penalty under Section 78 of the Finance Act, 1994 is not called for. Since as discussed above, there is no suppression of facts etc. on the part of the Appellant and this is a case of interpretation of exemption notification, and since the criteria for imposition of penalty under Section 78 *ibid* is the same as the criteria for invoking extended limitation period under proviso to Section 73(1), there are no grounds for imposition of penalty under Section 78. The same is, therefore, liable to be set aside. However, since the service tax was not paid by the due date, penalty under Section 76 has been correctly imposed.

5.1 In the light of Tribunal's decision (supra) and the observations referred above, the demand of service tax for the period of 2008-09 is hearby dropped as the extended period is not invokable against the appellant.

6. In the result, the impugned order is modified to above effect and the appeal partly allowed in above terms with consequential relief, if any, to the appellant.

[Dictated and Pronounced in the open court]

(Ashok K. Arya)
Member (Technical)

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