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/701/2012 - ST [DB]

[Arising out of Order-in-Appeal No.31 (AKJ) ST/JPR-I/2012 dated 06.03.2012 passed by the Commissioner (Appeals), Central Excise, Jaipur-I]

M/s.Indian Hotel Co. Ltd. …Appellant

Vs.

C.C.E., Jaipur … Respondent

Present for the Appellant : None
Present for the Respondent: Mr.J.P. Singh, D.R.

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

Date of Hearing : 30/03/2017
Pronounced on :07/07/2017

FINAL ORDER NO. 54779/2017

PER: S.K. MOHANTY

This appeal is directed against the impugned order dated 06.03.2012 passed by the Commissioner of Customs and Central Excise (Appeals-I), Jaipur.

2. Brief facts of the case are that the appellant is registered with the Service Tax Department for providing various taxable services. During the course of audit of books of accounts maintained by the appellant, the Department observed that during the financial years 2006-07 to 2007-08 (upto August, 2008), the appellant did not pay the service tax on commission amount paid to the foreign travel agent under reverse charge mechanism. Accordingly, after issuance of show cause notice, the matter was adjudicated, in confirming the Service Tax demand and imposing penalties under Section 76, 77 & 78 of the Finance Act, 1994. The adjudged demand was upheld by the ld. Commissioner (Appeals).

3. The ld. Consultant appearing for the appellant submitted that the appellant never advised its foreign clients to approach persons appointed in foreign countries for booking accommodation in appellant's hotel. Thus, he submitted that the overseas agents provide services to the foreign tourist in relation to booking of accommodation in appellant's hotel and such service is provided outside India and also consumed outside India. Therefore, it is his submission that such service cannot be leviable to Service Tax in India and the appellant will not be liable to pay Service Tax under reverse charge mechanism. The ld. Consultant further submitted that part of the Service Tax demand is not sustainable inasmuch as, import of service was not liable for Service Tax under reverse charge

mechanism prior to 18.04.2006. The ld. Consultant also submitted that the Service Tax demand for the period 01.03.2008 to 31.08.2008 is not sustainable in view of the Notification No. 14/2008 – ST dated 01.03.2008. He further submitted that the proceedings initiated by the Department are barred by limitation of time and thus, Service Tax Demand cannot be confirmed and penalties cannot be imposed on the appellant in view of the contentious issue of payment of tax by the service recipient. In this context, he relied on the judgement of Hon'ble Supreme Court in the case of Union of India vs. Indian National Shipowners Association – 2010 (17) S.T.R. J57 (S.C.).

4. On the other hand, the ld. D.R. appearing for the respondent reiterated the findings recorded in the impugned order.

5. Heard both sides and perused the records.

6. The fact is not under dispute that whenever the foreign tourists planned to visit India, they approached the overseas agents for necessary guidance for booking of accommodation in India. It has also not been disputed by the Department that the appellant had never advised to the foreign clients to approach the persons appointed in the foreign countries for booking accommodation in the hotel owned by the appellant. Thus, the appellant is not in the picture as far as receipt of any taxable service from the overseas clients is concerned. Since

the services were provided and consumed outside India, we are of the view that the appellant will not be liable to Service Tax under reverse charge mechanism in terms of Section 66A of the Finance Act, 1994.

7. In view of above, we do not find any merits in the impugned order. Accordingly, after setting aside the same, we allow the appeal in favour of the appellant.

[Pronounced in the open Court on 07/07/2017]

(B. RAVICHANDRAN)
MEMBER (TECHNICAL)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Anita