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

COURT-I

Date of hearing/Decision: 24.10.2017

Appeal No. E/53530/2014-EX [DB]
[Arising out of the Order in Appeal No. 05/SM/CE/D-II/14/CE-DLH/2014 2014 dated 07/04/2014 Passed by The Commissioner (Appeals), Central Excise, Delhi-II]

M/s Connaught Plaza Restaurants (P) Ltd. … Appellant

Vs.

CCE Delhi-II … Respondent

Appearance:
Present Shri Amit Jain, Advocate for the appellant
Present Shri M.R. Sharma, DR for the respondent

Coram: Hon'ble Justice Dr. Satish Chandra, President
Hon'ble V. Padmanabhan, Member (Technical)

FINAL ORDER No. 57459/2017

Per:Justice Dr. Satish Chandra

1. The present appeal is filed against Order-in-Appeal 05/2014 dated 09/04/2014. The disputed period is April, 1997 to February, 2001.
2. The brief facts of the case are that the appellant is engaged in the business of selling burgers, nuggets, shakes, soft-serve etc. through its fast food chain of restaurants, Known as McDonalds Family Restaurants. For the period under consideration, after issuing three show cause notices, the department had passed the adjudicating order which was finally assailed before the Hon'ble Supreme Court [CCE V/s Connaught Plaza Restaurants 2012 (286) ELT 321 SC]. Regarding the classification, the Hon'ble Supreme Court, decided the issue against the appellant. Remaining issues were not adjudicated. After having the order of the Hon'ble Supreme Court, the department had issued the recovery notices which were assailed before the Commissioner (Appeals) who has

confirmed the same. Being aggrieved, the appellant has filed the present appeal.

3. With this background, Shri Amit Jain, Ld. Counsel submits that after the Supreme Court order, the department has wrongly raised the demands. So, the appellant has filed the writ petition before the Hon'ble Delhi High Court [W.P. (C) 2849/2013] where it was finally dismissed on 07/10/2013. Being aggrieved, the appellant has filed the Interim Application in the earlier Civil Appeal no. 5307-5308/2003 before the Apex Court which was also dismissed by the Hon'ble Supreme Court on 07/10/2013.
4. In this scenario, the appellant has filed the present appeal. It is the submission of the Ld. Counsel that the department has raised the fresh penalty which was not in the original orders passed by the department. The Ld. Counsel also submits that the demand is time barred so, the extended period cannot be applied in the instant case. So, he made a request that the impugned order may kindly be set aside.
5. On the other hand, Shri G.R. Sharma, the representative of the department has justified the impugned order.
6. By considering the rival submissions, we are of the view that for the period under consideration, the matter finally had reached to the Hon'ble Supreme Court where all the orders were merged in the order passed by the Hon'ble Supreme Court as per the doctrine of merger. If any issue was not contested or raised, the same cannot be raised again before the Tribunal. However, the appellant is always at the liberty to raise the issue before the Supreme Court by way of Interim Application, if advised so.

7. Presently, we are of the view that when the order has merged with the Hon'ble Supreme Court's order then we have no justification to intervene in it. So, we decline to interfere with the impugned order.
8. However, in the interest of justice, as per judicial propriety, it is not fair on the part of the department to raise the fresh penalty which was not raised by the original order. If such penalty is imposed the same is likely to be set aside.
9. With the above observations appeal is disposed of.

[Order Dictated and Pronounced in the open court]

(V.Padmanabhan)
Member (Technical)

(Justice Dr. Satish Chandra)
President

Rekha