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

Service Tax Appeal No. 1817 of 2010

[Arising out of the Order-in-Appeal No. 330(CB)ST/JPR-II/2010 dated 16.09.2010, passed by Commissioner of Central Excise & Customs (Appeals), Jaipur, Rajasthan]

M/s. Fateh Prakash Palace **Appellant**

Vs.

Commissioner of Central Excise **Respondent**
Jaipur II

Appearance:

Ms Rinki Arora, Advocate for the Appellants
Shri P Juneja, DR for the Respondent

CORAM:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. B Ravichandaran, Member (Technical)

Date of Hearing/ Decision: 06.12. 2017

FINAL ORDER No. 58412 /2017

Per: B Ravichandaran:

The appellant is aggrieved by the impugned order dated 26.08.2010 which denied the abatement claim under Notification No. 1/2006 dated 1.3.2006. the appellant had discharged the service tax under the category of Mandap keeper services. The said notification allowed abatement of taxable value of 40% with condition that no credit shall be availed on input services in terms of Cenvat Credit Rules, 2004. In the present case, the dispute is that the appellant has availed such credit and accordingly barred from availing abatement.

2. Learned Counsel submits that they have availed benefit of Cenvat Credit of Rs. 15,617/- during the relevant time. However, on being pointed out, they reversed the same and as such, it should be construed that they have not availed any credit on input services and accordingly, should be eligible for such abatement.

3. Learned AR submitted that Mandap keeper services covers various activities, not only simply renting out of mandap, but includes catering services also. It is not clear that whether the appellants have availed any credit on such related activities which also are taxable under Mandap keeper services. He drew our attention to the findings recorded in para 6 of the impugned order. Since reversal of amount of Rs. 15,617/- will not cover the full requirement as per the notification, he supported the findings of the lower authorities.

4. We have heard both the sides and perused the appeal records. Regarding the abatement claim by the appellant, it will be available only when the condition that no credit is availed on the input services, is satisfied. Admittedly, the appellant availed the credit on input services. However, they reversed the amount of Rs. 15,617/-. The point of dispute is that whether such reversal will satisfy the condition

of abatement. While the legal position is not fulfilled by the appellant, initially, Hon'ble Supreme Court in the case of ***Chandrapur Magnet Wires Pvt. Ltd. vs CCE [1996 (81) ELT 3 SC]*** observed that such reversal can happen ever after the provision of output service. The other issue is regarding whether they have availed any credit on input service which are also relatable to incidental activities of Mandap keeper services like catering etc. This aspect is not clearly coming out by the defence supplied by the parties or facts recorded in the impugned order. The learned Counsel for the appellant submits that they did not avail any credit on any other service. This aspect has neither been categorically recorded nor appellant has taken support from documentary evidence. In such situation, we find it fit and proper to remand the matter to adjudicating authority for fresh decision on this issue. Appellant shall provide the supportive evidence before decision is taken by the adjudicating authority.

7. In the result, impugned is set aside. Appeal is allowed by way of remand.

(Dictated and pronounced in the open Court)

(Justice (Dr.) Satish Chandra) **(B Ravichandaran)**
President **Member (Technical)**

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