IN THE CUSPTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing/Decision:29.12.2017

Service Tax Appeal No.57888/2013 (DB)

[Arising out of Order-in-Appeal No.234(RDN) ST/JPR-I/2012 dated 19.10.2012 passed by the Commissioner (Appeals), Central Excise Commissionerate, Jaipur]

M/s.Mittal Construction — Appellant

Vs.

CCE & ST, Jaipur-I — Respondent

Appearance:
Rep. by Shri Ranjeet K. Ranjan, Advocate for the appellant.
Rep. by Shri P.Juneja, AR for the respondent.

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

Final Order No.58728/2017

Per B. Ravichandran:

The only point of dispute in the present appeal is service tax liability of the appellant with reference to construction of the guest house for M/s. Aditya Cement. The impugned order held that the appellant is liable to service tax under "Industrial or Commercial Construction Service".

2. The ld. Counsel for the appellant submits that the said building is constructed for M/s.Aditya Cement and it is used as a guest house for personal use of the employees of M/s.Aditya Cement Company during their visit. Certificate dated 5.3.2011 of M/s.Aditya Cement Company stating that the guest house is used

by the group employees and company guests. The same is neither available for commercial purpose nor covered under industrial building.

3. Ld. AR relying on the impugned order submitted that the said building is part of the business building of M/s.Aditya Cement and as such, the same is liable for tax.

4. We have heard both the sides and perused the appeal records.

5. We note that the Original Authority agreed with the appellant and dropped the demand of service tax holding that the said guest house cannot be considered as a building used for commerce or industry. However, on appeal, the impugned order reversed the decision and held against the appellant. We have perused the impugned order.

6. The sole reason recorded in the impugned order is that the ratio followed by the Tribunal in the case of **Khurana Engg. Ltd. – 2011 (21) STR 115 (Tribunal-Ahmd.)**, while examining the input service credit with reference to the service availed by the assessee in their guest house. The Tribunal examining the Cenvat Credit Rules allowed that the services, which are availed by the assessee for guest house are to be considered as in relation to the business activities and accordingly, the same is available. We find that the said ratio cannot automatically be applied to consider and decide the nature of building, whether commercial or industrial for the purpose of tax entry, admittedly, the building is used as a guest house. It is not used for commercial occupation of any guests other than the employees of

M/s.Aditya Cement. Such building is neither used for commercial purpose nor for industrial purpose. Accordingly, we note that the Original Authority is correct in determining the tax liability, which is reversed by the impugned order. The impugned order is set aside. The original order is restored. The appeal is allowed.

[Order dictated & pronounced in open court]

(Justice Dr. Satish Chandra)
President

(B. Ravichandran)
Member (Technical)

Ckp.