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

Date of Hearing/Decision:15.12.2017

Service Tax Appeals Nos.1619/2011 and 3490/2012(DB)

[Arising out of Order-in-Appeal No.IND/CEX/000/APP/199/12 dated 26.07.2012 passed by the Commissioner (Appeals), Customs & Central Excise, Indore]

M/s.Chokhi Dhani — Appellant

Vs.

CCE, Indore — Respondent

Appearance:

Rep. by Shri B.L. Narsimhan, Advocate and Shri Rachit Jain, Advocate for the appellant.
Rep. by Shri R.K. Manjhi, AR for the respondent.

Coram: Hon'ble Shri S.K. Mohanty, Member (Judicial)
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order Nos.58729-58730/2017

Per S.K. Mohanty:

The issue involved in both these appeals is identical and accordingly, the same are taken up for hearing together and a common order is being passed.

2. Denial of benefit of notification no.12/2003-ST dated 20.06.2003 is the subject matter of the present dispute. The brief facts of the case are that the appellant is registered under the taxable category of "Mandap Keeper Service". Apart from providing such service, the appellant also provides catering facilities to its customers, who uses the mandap owned by the appellant. For catering service, the appellant charges separately from the customers. However, the Department included the value of food items into the convention services and accordingly, confirmed the service tax demand against the appellant under Mandap Keeper

service. The benefit of notification no.12/2003-ST claimed by the appellant was denied on the ground that the appellant did not provide any documentary proof, indicating the value of food articles sold by it to the service recipient.

3. Heard both sides.

4. We find that the impugned order has observed vide paragraph 6.4 that the appellant had also sold food to such persons, who were availing the facilities of Mandap associated with the Dhani. Thus, it is evident that the appellant had demonstrated the charges separately claimed for the mandap keeper service and for providing the catering service to the customers. Hence, the requirements of notification no.12/2003 have been duly complied with and accordingly, the service tax demand cannot be confirmed by clubbing the value of food items sold during the course of providing ‘mandap keeper service’. Therefore, we are of the view that the appellant should be entitled for benefit of notification no.12/2003-ST .We find that this Tribunal in the appellant’s own case vide Final Order No. 56060/2016 dated 23.12.2016 has allowed the benefit of notification no. 12/2003-ST.

5. In view of above, we do not find any merits in the impugned order. Accordingly, the same is set aside and the appeals are allowed in favour of the appellant.

[Order dictated & pronounced in open court]

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

Ckp.