

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

Date of Hearing:17.01.2018

Date of Decision:12.02.2018

Service Tax Appeals Nos.600 and 3119/2012 (DB)

[Arising out of common Order-in-Appeal No.56/S.Tax/D-II/2012 dated 22.02.2012 in Appeal No.ST/600/2012 and Order-in-Appeal No.150/S.Tax/D-II/2012/1560 dated 07.08.2012 in Appeal No.ST/3119/2012 passed by the Commissioner (Appeals), Service Tax, New Delhi]

M/s. A.B. Hotels Ltd.

Appellant

Vs.

CST, Delhi

Respondent

Appearance:

Rep. by Shri Rajveer Singh, Advocate for the appellant.

Rep. by Shri P.Juneja, AR for the Department.

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

Final Orders Nos.50599-50600/2018

Per B. Ravichandran:

These two appeals are against common impugned order dated 22.02.2012 passed by the Commissioner (Appeals), Delhi-II. The appellants were managing a hotel including shopping/office space in the said building located near Airport, New Delhi. They have granted sub-lease of commercial block to various parties and entered into different agreements in this regard. For each of the sub-licensee for lease, the appellants had license agreement, which is for providing office or commercial space on lease on rent; maintenance agreement for operating air-

conditioning plant, generators, motor water pumps and electric installations, etc. in the licensed premises. In pursuance of this agreement, they also operate lifts and fire fighting equipments, etc. The third agreement is for user charges. The appellant erected generator and air-conditioning plants with various equipments. Sub-licensee were granted premises for partial use of the system including plant and machinery, for which user charges has been specified in the agreement, were collected. The Revenue held a view that license agreement is for renting of immovable property service and service tax was liable to be paid w.e.f. 1.6.2007. In respect of other two agreements, the Revenue entertained a view that they are liable to pay service tax for the period 16.06.2005 to 31.05.2007 under the category of maintenance or repair service in terms of Section 65(64) of the Finance Act, 1994. A demand of Rs.6,09,968/- was also raised for the period 10.09.2004 to 31.03.2008 under the category of Intellectual Property Right Service under Section 65(105) (wzr) read with Section 65(55a) and (55b) of the Finance Act, 1994 in respect of the usage of brand “The Great Kabab Factory” by another company. The lower authorities confirmed the service tax liability on both these accounts along with penalties.

2. Ld. Counsel for the appellant submitted that they have entered into agreements with the sub-lessees and these agreements are essentially with reference to leasing out on rent certain portion of commercial space in their building. The renting out of such commercial space is directly linked to the services of managing, operating common facilities like generators, lift, power back-up etc. They have started paying service tax on the full value w.e.f. 1.6.2007 when the tax levy was introduced on “renting of immovable property service”. A

part of the said consideration cannot be taxed prior to that date under a different heading of maintenance or repair service by bifurcating the same.

3. Regarding tax liability on IPR service, it is submitted that the said brand name was patented by the appellant and they have executed a MOU on 27.03.2000 with another legal entity, M/s. RHW Hotel, through which they have been granted RPI right for usage of the said brand name. The service tax liability on IPR service was introduced w.e.f. 10.09.2004, whereas the permission to use the brand name as per the MOU was much prior to the introduction of such tax levy. When such transfer of IPR rights happened before the tax liability was introduced, there can be no service tax on the consideration received thereafter. It is not a continuous supply of service in IPR. The ld.Counsel relied on the various judicial decisions in this regard.

4. Ld. AR contested the appeal stating that there were separate agreements for maintenance of various facilities provided to the lessees. Such facilities owned by the appellant were maintained and repaired, for which certain amounts were charged and collected by the appellant. As such, these amounts are rightly to be taxed under maintenance or repair service. He supported the findings of the lower authorities.

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

6. Admittedly, the appellants leased out various commercial space in their building to others. This is apparently a renting out of immovable property service, for this they have entered into three different agreements. The question for decision is whether the consideration identified with reference to maintenance of

common facilities like power supply, lift, common area, etc. can be separately taxed under maintenance or repair service. We note upon perusal of these agreements, it is clear that the primary object and reasons for these agreements are for the lessee to use the allotted space and to facilitate a proper usage of such leased out space, it is necessary for the appellant to provide all the required common facilities. Though there were arrangements through separate agreements, we note that the considerations under different headings, which are attributable to maintenance and repair and other activities are in essence with reference to the leasing out the property of the appellant. It cannot be said that the rental consideration received by the appellant alone can be taxed under renting of immovable property service. The other charges collected for common facilities are essentially forming part of the leasing service, without which the said leased agreements, of leasing out and usage of leased out property is not possible. Accordingly, we find that the whole consideration is with reference to leasing out of commercial property and is rightly to be taxed as renting of immovable property w.e.f. 1.6.2007. The appellant pleaded that they have paid service tax on such liability. We hold that a portion of the consideration for such renting cannot be taxed prior to 1.6.2007 under a heading of maintenance or repair service.

7. On the second issue regarding service tax liability on IPR service, we note that the tax liability is on transfer of such IPR. The said transfer admittedly happened through a MOU dated 27.03.2000. The considerations were received periodically does not make the service as a continuing service. This position is upheld by the Tribunal in **Reliance Industries Ltd. – 2016 (44) STR 82 (Tribunal-M)** and **Denso Haryana Pvt. Ltd. - 2016 (42) STR 754 (T-Delhi)**.

Accordingly, we find that when the taxable event happened prior to the tax entry was introduced in the law, no tax liability can be confirmed against the appellant.

8. In view of the above discussions and analyses, we find the impugned order cannot be sustained. Accordingly, the same is set aside. The appeals are allowed.

[Order pronounced on 12.02.2018]

(Justice Dr. Satish Chandra)
President

(B. Ravichandran)
Member (Technical)

Ckp.