IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. IV

DATE OF HEARING : 09/02/2018.
DATE OF DECISION: 09/02/2018.

Service Tax Appeal No. 50844 of 2014

[Arising out of the Order-in-Original No. JAI-EXCUS-002-COM-073-13-14 dated 31/10/2013 passed by The Commissioner of Central Excise, Jaipur – II.]

M/s Nagar Palika Mandal Appellant

Versus

CCE, Jaipur – II Respondent

Appearance

Shri Bharat Bhushan, Advocate – for the appellant.

Shri Sanjay Jain, Authorized Representative (DR) – for the Respondent.

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

Final Order No. 50629/2018 Dated : 09/02/2018

Per. B. Ravichandran :-

The appeal is against order dated 31/10/2013 of Commissioner of Central Excise, Jaipur. The appellant is Nagar Palika Mandal, Mount Abu, Sirohi District. The dispute in the present case relates to liability of the appellant under the category of renting of immovable property for various immovable assets owned by them. More specifically, the tax liability was with reference to Nakki Lake which was let out for boating and balloon rides etc., skating rink, let out for skating and certain shops let out for commercial purposes. The disputed period is 2007-2008 to 2011-2012. After verifying the records of the appellant, proceedings were initiated against them resulting in the present impugned order. The Original Authority confirmed service tax liability of Rs. 88,87,097/- and imposed penalties under Section 76, 77 and 78 of the Finance Act, 1994.

2. The learned Counsel contesting the findings in the impugned order submitted on the following grounds :-

(a) the appellant is a municipal body having various immovable assets in their control. Nakki Lake belonging to the Mandal was contractually let out to some persons to undertake activities like boat ride, balloon ride etc. for the public. Similarly, the appellant has skating rink which is also let out to another person to manage. The skating rink is used by the public on payment of certain fees;

(b) these two facilities are not covered for tax liability under renting of immovable property service as these are excluded from tax liability specifically. In other words land used for, among other things, "entertainment" is excluded from tax liability. The lake as well as skating rink are used basically for entertainment of public though on payment of certain fees ;

(c) elaborating the scope of the term "entertainment" reference was made to the decisions of Hon'ble Supreme Court in **Y.V. Srinivasamurthy and ors. vs. The State of Mysore and Anr. – AIR – 1959 – SC – 894, Geeta**

Enterprises and Ors. vs. State of U.P. and Ors. – AIR 1983 SC 1098 and the main contention is that the term 'entertainment' should be understood as amusement, diversion, distraction, recreation, fun, play, good time, pastime, novelty; pleasure, enjoyment, satisfaction. Since, the term 'entertainment' has not been defined, the general common understanding should be applied ;

(d) regarding tax liability of the shops let out, the learned Counsel while admitting the said tax liability submitted that extended period cannot be invoked as when the tax entry was introduced in 2007, they have intimated the Department through their letter dated 09/08/2008. The present show cause notice has been issued only in 17/07/2012. Further, the appellant is a local municipality, a statutory local Government with no motive to defraud the Central Government. No malafide can be attributed to the appellant. Accordingly, it is prayed that the demand for extended period as well as penalty for such demand be set aside.

3. The learned AR reiterated the findings of the lower authority and submitted that regarding renting out the commercial shops, there can be no bonafide belief on the part of the appellant as the taxable activity is clear and apparent.

4. We have heard both the sides and perused the appeal record. Regarding the consideration received by the appellant from the contractors for using the Nakki Lake and the skating rink area, we note that these two will fall under the excluded category of land used for "entertainment". Admittedly, both these properties in the form of land were used for admitting public for

general amusement. The case laws relied upon by the appellant brings out the examination of scope of the term "entertainment" by the Apex court. We are in the agreement with the submission of the appellant; the term should be given a wider meaning in the absence of any statutory definition. Boat/balloon ride on the lake, skating in the skating rink will fall under the overall ambit of entertainment. As such, we hold the tax liability of these considerations cannot be sustained.

5. Regarding the rental income from commercial shops, we hold that appellant is liable to service tax. However, based on the facts submitted by the appellant and also considering the status of the appellant as a local Government Authority, we hold that no malafide can be attributed to them for non-payment of tax in time. Accordingly, we note that while the appellant is liable to pay service tax on letting out the commercial properties like shops etc., the same shall be restricted to normal period of demand with no penalties. As such, the appeal is partly allowed.

(Order dictated and pronounced in the open court.)

(S.K. Mohanty) **(B. Ravichandran)**
Member (Judicial) **Member (Technical)**
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