CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-DB

COURT –IV

Service Tax Appeal No. ST/51447/2014-ST [DB]

[Arising out of Order-in-Original No. 118-120/ 87/GB/2013 dated 11.06.2013 passed by the Commissioner of Service Tax, New Delhi.]

C.C.E., Delhi. **...Appellant**

Vs.

M/s. ITC Ltd. **... Respondent**

Present for the Appellant : Mr.Ravinder Narain, Advocate
Present for the Respondent : Mr.A.K. Singh, DR.

Coram: HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. B. RAVICHANDRAN, MEMBER (TECHNICAL)

Date of Hearing :12.12.2017
Date of Decision :_14.03.2018

FINAL ORDER NO. 50969/2018

PER S.K. MOHANTY:

Brief facts of the case are that the respondent is registered with the Service Tax Department for providing various taxable services, defined under the Finance Act, 1994. As per the Operating Services Agreement entered into between the respondent and its subsidiaries/joint ventures/associates, the respondent stationed various Managerial/Supervisory and technical staff at those hotels. The gross salary including P.F., Pension, Gratuity and LTA of its employees are recovered by the respondent from those hotels and reflected under the accounting head of "Management Salary Recovery". The Department interpreted that such services provided by the respondent to different hotels should be classifiable under the taxable category of "Manpower Recruitment and Supply Agency" service. Accordingly, the Department initiated show cause proceedings against the respondent, seeking confirmation of the service tax demand under such category of service and for imposition of penalties. The Show Cause Notices issued by Department were adjudicated vide the impugned order dated 11.06.2013, wherein, the proceedings were dropped, holding that the reimbursement of salaries and perks of the managers deployed to associate/subsidiary hotels do not attract taxability under such category of service. Feeling aggrieved with the impugned order, Revenue has filed this appeal before the Tribunal.

2. The ld. DR appearing for the Revenue reiterated the grounds of appeal urged in the appeal memorandum.

3. On the other hand, ld. Advocate appearing for the respondent supported the findings recorded in the impugned order and further submitted that the issue arising out of the impugned order is no more *res-integra,* in view of the decision of the Tribunal in the case of Fortune Park Hotel Ltd. Vs. Commissioner of Service Tax, Delhi - 2017(49) S.T.R 567 (Tri.-Del.), which is a associate company of the respondent.

4. Heard both sides and perused the case records.

5. The respondent, in this case, made agreements/ arrangements with the hotels namely, WH Rama International, Grand Bay, Srinivasa Resort, ITC Park (Chennai), Fortune Park Hotels Ltd., Maharaja Heritage Resorts Ltd., Landbase India Ltd., Sullivan Court and International Travel House for stationing various managerial/ supervisory personnel, in order to maintain

ITC standards and run its operation in a smooth and efficient manner. Since the respondent and those hotels are independent cost centers, the salary and other cost were recovered on actual basis, without any markup. It is an undisputed fact on record that the respondent is not engaged in the business of providing/ recruiting/ supply of man power. Rather, the respondent was established with the sole objective of providing the hospitality business of itself and through its associated companies. Since the actual expenses incurred by the respondent towards deployment of the managerial personal were reimbursed by the hotels on actual basis, without any markup, it cannot be said that such expenses should be considered a service fee, taxable under the category of "Manpower Recruitment or Supply Agency" service. We find that in the case of Fortune Parks Hotels Ltd. (supra), which is one of the hotels, where the respondent deploys its staff members, the Tribunal has held that the salary paid to the employees and reimbursed by the hotels, without any markup, cannot be subjected to service tax under Section 67 of the Act, by treating the same as part of the 'gross amount' charged by service provider 'for services provided by him'.

6. In view of the above, we do not find any merits in the appeal filed by Revenue. Accordingly, the same is dismissed.

[Pronounced in the open court on ___14.03.2018_]

(B. RAVICHANDRAN)
MEMBER(TECHNICAL)

(S. K. MOHANTY)
MEMBER (JUDICIAL)

Sakshi