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

Date of Hearing: 08/02/2019

Appeal No. ST/51553/2018-SM

(Arising out of Order-in-Appeal No. OIA-58/AK/ST/JPR/2017 dated 16/03/2018 passed by COMMISSIONER OF CGST & CENTRAL EXCISE-JAIPUR-I(Appeal))

HOTEL AASHISH **Appellant(s)**

Vs.

C.C.E. & S.T.-JAIPUR-I **Respondent**

Appearance
Sh. Mudit Jain, Advocate for the appellant

Sh. K. Poddar, DR for the respondent

CORAM: HON'BLE MRS. ARCHANA WADHAWA, MEMBER(JUDICIAL)

Final Order No. 50214/2019

Per Archana Wadhwa

Ld. Advocate appearing for the appellant submits that he is not challenging the confirmation of service tax against them, which is in respect of the food supply in hotel rooms of the guests. However, the challenge in the present appeal is only to imposition of penalty of Rs. 2,34,268/- lakhs imposed upon the appellant in terms of the provisions of Section 78 of the Service Tax.

2. Ld. Advocate beings to my notice two decisions of the Hon'ble High Courts in the case of **Kerala Classified Hotels & Resorts Associates Vs Union of India [(2013) 35 taxmann.com 568(Kerala)] & Indian Hotels & Restaurant**

Association vs. Union of India,[(2014) 44 taxmann.com 455(Bombay)] wherein such services were held as not taxable but submits that having deposited the service tax, he is not challenging the same. However, he submits that in view of above decisions and there being doubt in the field, imposition of penalty upon them is not justified.

3. I find that admittedly during the relevant period issue was not free from doubt in which case no malafide can be attributed to the appellant so as to invoke the penal provisions against them. Accordingly, while upholding the service tax as not contested, the penalty imposed upon them is set aside and appeal is allowed to that extend.

(Dictated and pronounced in open court)

(Archana Wadhwa)
Member(Judicial)

Tejo