CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI.

PRINCIPAL BENCH - COURT NO. II

Service Tax Appeal No. 55854 of 2014

(Arising out of order in appeal No. IND/CEX/000/ APP/143/2014 dated 18.07.2014 passed by the Commissioner (Appeals) Customs, Central Excise & Service Tax, Indore).

M/s Vivaswan Hotels (India) Pvt. Limited **Appellant**
Opp. Ram Krishan Ashram
University Road, Gwalior

VERSUS

Commissioner (Appeals) Customs & Central Excise and Service Tax, **Respondent**
208, Corporate House, B-Block, 169, RNT Marg
Indore - 452001.

APPEARANCE:

Sh. Prashant Shukla, Advocate for the appellant
Sh. G. R. Singh, Authorised Representative for the respondent

CORAM: **HON'BLE MS. ARCHANA WADHWA, MEMBER (JUDICIAL)**
HON'BLE MR. BIJAY KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 50653/2019

DATE OF HEARING: 06.05.2019
DATE OF DECISION: 06.05.2019

ARCHANA WADHWA:

After hearing both the sides, we find that the short issue required to be decided in the present appeal is as to whether supply of bed rolls to on board AC coach train passenger of Indian Railway on behalf of the IRCTC licensee would amount to providing taxable services falling under the category of 'Business Auxiliary Services'.

2. Learned Advocate for the appellant fairly agrees that the issue stands decided against them but assails the impugned order on the point of

limitation. He draws our attention to the Tribunal decision in the case of **R. K. Refreshment & Enterprises (P) Ltd. Vs. Commr. of C. Ex. Raipur - 2018 (14) GSTL 281 (Tri. Del.)** laying down that such activities would fall for confirmation of service tax. However, in the same very judgement, the benefit of extended period stands allowed to the appellant on the ground that the issue was bonafide issue.

3. We note that admittedly lot of litigation was going on in respect of supply of bed rolls to the passenger, which was being challenged also before the Tribunal in number of cases. As such, it can be safely concluded that it was an issue of bonafide dispute between the persons identically situate and the Revenue. In the absence of any evidence to indicate any malafide on the part of the assessee, we are of the view that the extended period of limitation would not be available to the Revenue. Inasmuch as in the present case the demand pertains to the period 2007-08 whereas the show cause notice was issued in 2012, we are of the view that the impugned show cause notice as also the impugned order are not sustainable on the point of limitation. We accordingly, set aside the same and allow the appeal on the point of limitation.

(Dictated and pronounced in open Court).

(Archana Wadhwa)
Member (Judicial)

(**Bijay Kumar**)
Member (Technical)

Pant