IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH: KOLKATA

Appeal No.ST/207/2008

(Arising out of Order-in-Appeal No.152/Pat/S.Tax/Appeal/2008 dated 22.09.2008 passed by the Commissioner (Appeals)of Customs & Central Excise, & Service Tax, Patna)

M/s. Suvidha Tent House

Applicant (s)/Appellant (s)

Vs.

Commissioner of Central Excise & Service Tax, Patna

Respondent (s)

Appearance:
Shri N.K.Lal, CA for the Appellant (s)
Shri A.Roy, Suptd. (AR) for the Respondent (s)

CORAM:
Hon'ble SHRI JUSTICE (DR.) SATISH CHANDRA, PRESIDENT
Hon'ble SHRI V.Padmanabhan, Member (Technical)

Date of Hearing/Decision:- 03.05.2018

ORDER NO. FO/75989/2018

Per Dr. Satish Chandra

1. The present appeal has been filed against the Order-in-Appeal No.152/Pat/S.Tax/Appeal/2008 dated 22.09.2008.

2. It is the second round of litigation before this Tribunal. Brief facts of the case are that the appellant has provided Shamiana and Tent for conducting election. Payment was received from the Election Commission through Collector. The appellant has not collected the service tax which was demanded by the impugned order. Aggrieved by the same the appellant has filed the present case.

3. With this background we heard both sides and perused the appeal record.

4. After perusal of record it appears that identical issue has come up before the Tribunal in the case of India Trade Promotion vs. Commissioner of Central Excise [2001(164) ELT 163 (Tri.-Del.)] where it was observed as under:

> ***"9.****The above position is brought out even more clearly from the renting out of stalls to the Election Commission. That Commission has the power and duty to conduct elections to various legislatures. It carries out that function normally from its permanent office. Making arrangements for voting, storing of ballot boxes, counting of ballots etc. are essential parts of the official work of the Election Commission. At times, when the work load increases and cannot be carried out from its regular offices, the Election Commission hires out other people's premises like schools or ITPO's Stalls for carrying out these official activities. These are different from a ceremony organised, e.g. celebration of the Silver Jubilee of the Election Commission of India or Honouring the Commission's functionaries or other persons connected with it.*
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> ***10.****In view of the above, we are firmly of the view that the interpretation sought to be placed by the Revenue is contrary to the scheme of the service tax on mandap keepers. If the word function in the definition is to be taken to be mean "activity" and service tax is to be imposed on that basis, all official, social and business activities would be rendered liable to service tax. That is to say, anyone who rents out his premises to the Election Commission will be liable to pay service tax on the consideration received. Same would be the position of persons who rent out premises for office, business or social activities. This clearly is not the intention of the legislature, because the definition limits the levy to temporarily organised official, social or business functions is ceremonies.*

11.*The services tax demand made on the appellant/ITPO with regard to rental receipts from participants in trade fairs and the Election Commission is not legally tenable inasmuch, in those cases ITPO was not functioning as a mandap keeper allowing temporary use of the mandap "for organising any official, social or business function" and the demand is required to be set aside. Interest and penalty have no independent standing. They too fail. Accordingly, we set aside the impugned order and allow the appeal."*

5. By following the ratio laid down by the Tribunal in earlier order (supra) we find no reason to sustain the impugned order. The same is hereby set aside.

6. In the result, the appeal is allowed.

(Dictated and pronounced in the Open Court)

S/d.
(Justice Dr. Satish Chandra)
President

S/d.
(V.Padmanabhan)
MEMBER (Technical)

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