

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

S.T.Appeal No.70/08

(Arising out of Order-in-Appeal No.03/ST/08 dated 29.01.2008 passed by Commr. (Appeals) of Central Excise, Kolkata)

M/s Academy of Fine Arts

Applicant (s)/Appellant (s)

Vs.

Commr. of S.Tax, Kolkata

Respondent (s)

Appearance:

Shri R.C.Agarwal, Advocate for the Appellants(s)
Shri S. S. Chattopadhyay, Supdt. (AR) for the Revenue

CORAM:

HON'BLE SHRI P.K.CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE SHRI V. PADMANABHAN, MEMBER (TECHNICAL)

Date of Hearing : 14.11.2018

Date of Decision : 14.11.2018

ORDER NO...FO/A/76941/2018

Per Bench :

The present appeal is against the Order-in-Appeal No. 03/ST/08 dated 29.01.2008.

2. The appellant has an auditorium, which is rented to their clients/customers for drama and rehearsals to amateur theater groups. The auditorium was used for such cultural performances. The charges recovered by the appellant for such letting out of the auditorium was held by the lower authorities to be liable for payment of service tax under the category of "Mandap Keeper Service" in Section 65(67) of the Finance Act, 1994. Accordingly, after issue of show-cause notice, the demand of service tax was confirmed against the appellant. The

lower authorities further ordered for payment of interest as well as penalties under Sections 76 and 78 of the Finance Act, 1994. The order of the Commissioner (Appeals) is under challenge in the present appeal.

3. The appellant is represented by Shri R. C. Agarwal , Id.Advocate and Revenue is represented by Shri S.S.Chattopadhyay, Id.D.R.

4. The Id.Advocate for the appellant submitted that the appellant is a non-profit organization and exempted from payment of income tax. He submitted that the auditorium is rented only for drama and rehearsals, which cannot be considered to be in the nature of official, social and business functions. Accordingly, he submitted that the appellant will not come within the ambit of "Mandap Keeper Service" and he prayed that the service tax liability may be set aside.

5. The Id.D.R. for the Revenue justified the impugned order. He submitted that the activities for which auditorium was let out, have been held to be liable to payment of service tax in the following case laws :

(i) Gadkari Rangayatan Vs. CST, Mumbai II : 2014 (36) STR 155 (Tri.-Mumbai) ;

(ii) Secretary, Town Hall Committee Vs. CCEx., Mysore : 2007 (8) STR 170 (Tri.-Bang.).

6. Heard both sides and perused the appeal records.

7. The appellant has rented out their auditorium for carrying out cultural activities, such as, Dance, Drama etc. and recovered rental charges for the same. The question is whether such charges recovered are liable for payment of service tax under the category of "Mandap

Keepers Services” as defined under Section 65(67) read with Section 65(105)(m) of the Finance Act, 1994. We find that an identical issue has come up before the Bombay Bench of this Tribunal in the case of Gadkari Rangayatan (supra). The Tribunal has observed as follows :

"4. We have carefully considered the rival submissions.

4.1 As per Section 65(105)(m) the Mandap Keeper service defined as "any service provided or to be provided to any person by a Mandap Keeper in relation to the use of Mandap in any manner including the facilities provided or to be provided to such person, in relation to such use and also the services, if any, provided or to be provided as a caterer." Section 65(66) defines Mandap as any immovable property as defined under Section 3 of the Transfer of Property Act, 1882 and includes any furniture, fixtures, light fittings and floor coverings therein let out for consideration for organizing any official, social or business function. As per explanation thereto, social function includes marriage.

4.2 The question to be decided is when the Auditorium is rented out for conducting cultural functions, whether the same would get covered within the definition of Mandap Keeper. This very issue was considered by this Tribunal in the case of Secretary, Town Hall Committee (supra) and this Tribunal held as follows :-

"The term 'social function' is very comprehensive. Cultural events are only a subset of social functions. In our view, any cultural event would also be considered as a social function. In a social function like dance or drama, many people attend for watching the programme. We cannot say that there is no meeting of minds. The learned Advocate wants to restrict the scope of function only to certain

ceremonies like marriage. We are afraid that there is no justifiable reason for limiting the scope of the term 'social function' in such a manner."

Thus, this Tribunal held that cultural functions are also social functions and renting out the hall for cultural functions would attract Service Tax liability. The said decision of the Tribunal was also upheld by the Hon'ble High Court of Karnataka reported in [2011 \(24\) S.T.R. 172 \(Kar.\)](#). This Tribunal also followed the ratio of the said decision in the case of Manager, Ravindra Kalakshetra (supra) and also in the case of Surat Municipal Corporation v. Commissioner of Central Excise, Surat reported in [2006 \(4\) S.T.R. 44](#). Thus, we are of the considered view that the activity undertaken by the appellant in the present case would get squarely covered under the category of "Mandap Keeper Services" and the appellants are liable to pay Service Tax on the said activity accordingly.

4.3 *The next issue to be decided is whether the extended period of time invoked to confirm the duty demand can be sustained and whether the appellant can be charged with intention to evade payment of Service Tax? A similar issue was considered in the case of Surat Municipal Corporation case (supra) and it was held that in the case of Statutory/Government bodies, there can be no mala fide intention to evade payment of Service Tax and it can be considered only as an omission on the part of the appellants and, therefore, there is no need to impose any penalty and invoke any extended period of time. A similar view was held in the case of other Government bodies, in BEST Undertaking v. Commissioner of Central Excise, Mumbai - [2007 \(213\) E.L.T. 202](#).*

4.4 *Following the ratios of the above decisions, in the present case also, we hold that the demand of Service Tax*

can be upheld only for the normal period of limitation and not for the extended period. The adjudicating authority is directed to re-compute the duty demand for the normal period of limitation and intimate the same to the appellants for payment. The appellant would also be liable to pay interest on the recomputed demand in terms of Section 75 of the Finance Act, 1994.

4.5 *As regards penalties imposed on the appellants, we hold that there cannot be any mala fide intention on the part of the appellant being a Government body and, therefore, we set aside the penalties imposed on the appellants under Section 80 of the Finance Act, 1994.”*

8. By following the above decision, we come to the conclusion that the appellant will be liable to payment of service tax. But keeping in view the facts and circumstances of the case, we are of the view that no malafide intention to evade payment of service tax can be attributed to the appellant. By considering the non-payment of service tax only as an omission on the part of the appellant, we restrict the demand to the normal period of limitation along with interest under Section 75 of the Finance Act, 1994. In these circumstances, we also hold that this is a fit case for waiver of all penalties under Section 80 of the Finance Act, 1994 and we do so.

9. In the result, the appeal is partly allowed.

(Dictated and pronounced in the open court)

Sd/
(P.K.Choudhary)
Member (Judicial)

mm

Sd/
(V.Padmanabhan)
Member (Technical)