IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT No. I

APPEAL No. ST/86171/2015
ST/CO/91118/2015

(Arising out of Order-in-Original No. GOA-EXCUS-000-COMM-014-14-15 dated 30.12.2014 passed by Commissioner of Central Excise & Service Tax, Goa)

Commissioner of Central Excise, Goa **Appellant**

Vs.

Vainguinim Valle Resport **Respondent**

Appearance:

Shri M.K. Sarangi, Additional Commissioner (AR),for appellant
Shri Bharat Raichandani, Advocate, for respondent

CORAM:

Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon'ble Mr. SanjivSrivastava, Member (Technical)

Date of Hearing:05.03.2019
Date of Decision:05.03.2019

ORDER No.A/85428/2019

Per: S.K. Mohanty

Heard both sides and examined the case records.

2. Revenue is in appeal against the impugned order dated 30.12.2014 passed by the Commissioner of Customs, Central Excise & Service Tax, Panaji, Goa. The impugned order was assailed on the ground that services provided by the respondent to M/s. Brittos Amusements Pvt. Ltd. (BAPL), pursuant to the joint

venture agreement with M/s. Goa Golf Club Pvt. Ltd., should fall under the taxable service under the category of 'support services of business or commerce', defined under Section 65(104c) of the Finance Act, 1994. Revenue contended that in view of the Negative List of taxable service dated 01.07.2012, the respondent should be liable to pay service tax on such taxable service.

3. On perusal of the impugned order, we find that the period in dispute was from October 2007 to March 2013. Upon analysis and scrutiny of the joint venture agreement, the adjudicating authority by relying on the Board circular No.109/03/2009 dated 23.02.2009, has held that there is no relationship of service provider or service receiver between the parties to joint venture agreement and there is no consideration received by either side for rendering the service. He has further held that the agreement specifically provides that the profit/loss arising out of the business should be shared by both sides. Thus, it transpires that there is no involvement of two persons, to execute the terms of the agreement; one is to be considered as service provider and the other to be service receiver. The department has not challenged the show cause notice issued for the entire period, i.e. prior to introduction of the negative

list and thereafter. Thus, it emerges that the department is not contesting specifically the findings of the learned Commissioner that there is no relationship existing between the service provider and the service receiver and that no consideration has been received for providing any taxable service. Therefore, we are convinced with the impugned order passed by the adjudicating authority, wherein he has held that service tax liability cannot be fastened on the respondent.

4. In view of above, we do not find any merits in the appeal filed by Revenue. Accordingly, the same is dismissed. The cross objection filed by the respondent is disposed of.

(Pronounced in court)

(SanjivSrivastava)
Member (Technical)

(S.K. Mohanty)
Member(Judicial)

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