(2014) 01 CESTAT CK 0006

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Stay Application No. 58507 Of 2013 In Service Tax Appeal No. 57909 Of 2013

?M/s Fairyland Hotels & Resorts (P) Ltd. APPELLANT

Vs

CCE, Indore RESPONDENT

Date of Decision : 07-01-2014

Acts Referred:
Finance Act, 1994 — Section 65(105)(zzzz), 65(90a), 76, 77, 78

Citation : (2014) 01 CESTAT CK 0006

Hon'ble Judges : Archana Wadhwa, J;Rakesh Kumar, Technical Member

Bench : Division Bench

Advocate : Deepak Kumar Bajpai, Amresh Jain

Final Decision : Allowed

Judgement

1. The entire confirmed demand of Rs.72,306/- already stands deposited by the appellant alongwith interest. Accordingly we waive the condition of pre-deposit of penalty and proceed to decide the appeal itself inasmuch as the appellant is not contesting the confirmation of demand and interest and is only praying for setting aside the penalty.

2. It is better to reproduce the relevant para of the impugned order of Commissioner (Appeals)

"5. 3 I observe that vide notification No. 23/2007 ST dated 22 5 2007, levy of service tax was introduced on renting of property service by virtue of clause 65(105)(zzzz) read with section 65 (90a) defining taxable service w.e.t. 1.6.2007. In the Finance Bill, 2010 by virtue of para 76, validation law was introduced whereby the verdict of any court. pronouncement was declared to be redundant and the levy was held to be constitutionally valid with retrospective effect w.e.r 1.6.2007 The provisions of Finance Bill were enacted on 8th May, 2010 and the clause 77 of the Act of 2010 brought into force the validation laws pertaining to renting of immovable property to be valid and applicable with retrospective effect The Finance Bill. 2010 has made an amendment in the definition of the taxable service 'Renting of immovable property' section 65(105)(zzzz) to provide that the activity of renting' itself is a taxable service This change was given effect to with retrospective effect from 1.6.2007'

3. It is seen that there was some dispute going on about the taxability of resting of immovable property before various Courts. One such reference can be made to dispute before the Hon'ble High Court of Delhi in the cases of Home Solution Retail India Limited. The above reproduced para also shows that there was some retrospective amendment.

4. We also note that Section 80 was amended and a new provision of section (2) was introduced laying down which is reproduced below:

"(2) Notwithstanding anything contained in the provisions of section 76 or section 77 or section 78. no penalty shall be imposable for failure to pay service tax payable, as on the 6th day of March, 2012. on the taxable service referred to in sub-clause (zzzz) of clause (105) of section 65, subject to the condition that the amount of service tax along with interest is paid in full within a period of six months from the date on which the Finance Bill, 2012 receives the assent of the President".

5. In terms of the said section, if the service tax alongwith interest stands paid within a period of six months from the date on the Finance Bill, 2012 received the assent of the President. no penalty shall be imposed on the assessee. The appellant in the present case has deposited the service tax alongwith interest on 03.12.2011 and 25 05.2012 As such the said provision is fully applicable to the facts of the present case. We also note that the Tribunal in the case reported as 2013 (32) STR 642 (Tri Ahmd.) under similar circumstances has set aside the penalty imposed upon the appellant under all the sections of the Finance Act.

5. In view of the above, while confirming the demand of service tax and interest, as not contested by the appellant, we set aside the penalty imposed upon the appellant Stay petition as also appeal get disposed of in above manner.