(2024) 07 CESTAT CK 1530

In the Customs, Excise And Service Tax Appellate, New Delhi

Case No : Service Tax Appeal No. 52351 of 2018

M/s. Leisure Hotels Limited @APPELLANT @Hash Commissioner of Central Excise & CGST @RESPONDENT

Date of Decision : 19-07-2024

Acts Referred:
Finance Act, 1994 — Section 65(105)(zzzz), 65(105)(zzzzj), 66E(f), 75, 77, 78

Citation : (2024) 07 CESTAT CK 1530

Hon'ble Judges : Binu Tamta, Member (J);Hemambika R. Priya, Member (T)

Bench : Division Bench

Advocate : Kapil Vaish, S.K. Ray

Final Decision : Allowed

Judgement

Binu Tamta, J

1. M/s. Leisure Hotels Limited, Appellant has assailed the order-in-appeal no.18-20/2017-18 dated 28.02.2018, whereby the Commissioner (Appeals) confirmed the demand of service tax under the category of 'renting of hotels' and 'letting out of Plant/Machinery' under 'Supply of Tangible Goods', SOTG.

2. The appellant is engaged in the business of "management and running of hotels, restaurants", etc. at various places. The entire building was let out by the appellant to M/s.Mahindra Holidays and Resorts India Limited, MHRIL for use as hotels along with the facilities of swimming pool, bar, restaurant, conference hall, fitness centre being incidental to the said hotel in terms of the lease deed.

3. The present show cause notice dated 15.04.2015 was issued for the period September,2013 to March, 2014 on the ground that they are rendering services of "renting of immovable property" and "supply of tangible goods" and consequently, they were liable to pay service tax of Rs.14,45,614/- along with interest under Section 75 and penalty under Section 77 and 78 of the Finance Act, 1994, The Act. The Adjudicating Authority held that leasing of the hotel was liable to service tax under 'renting of immovable property services' as they fall under Section 65(105)(zzzz) of the Act, in so far as the demand for supply of

tangible goods services, it was observed that the legal right of the possession and effective control was not transferred to MHRIL and, therefore, the services rendered by the appellant were taxable under Section 65(105)(zzzzj) of the Act as supply of tangible goods services. Accordingly, the demand was confirmed along with interest and penalty. On appeal, the impugned order was passed by the Commissioner (Appeals) and hence, the present appeal has been filed before this Tribunal.

4. Heard Shri Kapil Vaish, learned Counsel for the appellant and Shri S.K. Ray, Authorised Representative for the respondent.

5. Learned Counsel for the appellant relies on the earlier order of this Tribunal in their own case being Final Order Nos.51215-51216/2019 dated 13.09.2019, where the earlier show cause notice issued for the previous period i.e. August, 2008 to June, 2012 was considered towards demand of service tax in respect of both the services, which are raised here in this appeal. Learned counsel relied on the findings in the said order on both the counts and accordingly, prayed for setting aside the impugned order.

6. Learned Authorised Representative for the respondent fairly conceded that the issues now raised before this Tribunal have already been decided by the earlier Final Order Nos.51215-51216/2019 dated 13.09.2019. Perusing the earlier order of this Tribunal, we find that the issues raised therein were as under:-

· Whether for the period August 8/2008 to June, 6/2012, the buildings (at Corbett Ramnagar & Naukuchiyatal) which were renting, covered in the definition of immovable property, and appellants were therefore liable for payment of service tax under the provisions of Finance Act, 1994 (for short "Act").

· Whether w.e.f. 01.07.2012, the appellants are eligible for abatement of 40% in terms of notification no.26/2012.

· Whether the appellants are liable for payment of service tax on letting out plant/machinery and fixtures to M/s.Mahindra Holidays & Resorts India Ltd. ("MHRIL" for short) under supply of Tangible Goods. ("SOTG" for short)."

· Whether extended period of limitation is invokable.

· Whether penalty under Section 77 and 78 is imposable."

7. In the present appeal also, identical issues have been raised and decided by the lower authorities. Hence, the findings as recorded in the earlier order are squarely applicable to the present case.

8. For the period upto June, 2012, relying on the provisions of Section 65(105)(zzzz) and the Exclusionary Clause (d), which provided that, "building used solely for residential purposes and buildings used for the purpose of accommodation including hotels, hostels, boarding houses, holiday accommodation, tents,

camping facilities shall not be included in the category of ‘immovable property’ for the purpose of business or commerce. The issue is no longer res integra as the same is considered on the earlier occasion also by this Tribunal in the case of Ambience Construction India Ltd. Vs. Commissioner, 2013 (31)STR 343 (Tribunal) and also in the case of Jay Mahal Hotels Pvt. Ltd Vs. Commissioner of Central Excise, Jaipur, 2014 (36) STR 669 (Tribunal-Delhi), where the Tribunal held as under:-

“10. On a true and fair construction of provisions of the exclusionary clause under Explanation 1 to Section 65(105)(zzzz); and in particular sub-clause (d) thereof, we are compelled to the conclusion that renting of buildings used for the purpose of accommodation including hotels, meaning thereby renting of a building for a hotel, is covered by the exclusionary clause and does not amount to an “immovable property”, falling within the ambit of the taxable service in issue.”

9. With the introduction of the Negative List w.e.f. 01.07.2012, the scheme of “Service Tax” had been changed and thereby all services except specified in the Negative List of exemption notification have become taxable under Section 66B. Further, under Section 66E, certain services have been constituted as ‘declared service’ and clause(e) of Section 66E covers ‘renting of immovable property’ as ‘declared service’. The case of the appellant is that since renting of hotels is not covered in the Negative List but had become taxable, therefore, they have paid the service tax on the letting out of the hotel building w.e.f. 1.7.2012. Notification No.26/2012 dated 20.06.2012 exempted the taxable services of the description specified in Column (2) of the Table therein, from so much of the service tax as in excess of the service tax calculated on a value, which is equivalent to the percentage specified in the corresponding entry at Serial No.6 of this Notification i.e., renting of hotels, inns, guesthouse, clubs, camp sites or other commercial places meant for residential or lodging purposes to the extent of 60%. Thus under the specific entry in the notification, the appellant is eligible for abatement to the extent of 40% and was liable to pay service tax on 60% of the value. Since the appellant have paid the service tax on 60% of the value of the rental amount received on letting out the said hotel, they are not liable for any further payments towards service tax and therefore, the demand for the balance amount stands dropped.

10. On the second issue of letting out of the Plant & Machinery to MHRIL under ‘supply of tangible goods’, the definition of ‘supply of tangible goods’ under Section 65(105)(zzzzj) reads as under:-

“(105) “taxable service” means any [service provided or to be provided]

(zzzzj) “to any person, by any other person in relation to supply of tangible goods including machinery, equipment and appliances for use, without transferring right of possession and effective control of such machinery, equipment and appliances;”

11. With the insertion of the taxable entry of ‘supply of tangible goods’ w.e.f. 16.05.2008, the Board vide Circular dated 29.02.2008 clarified the scope of the said entry as under:-

“4.4.3 Proposal is to levy service tax on such services provided in relation to supply of tangible goods, including machinery, equipment and appliances for use, with no legal right of possession or effective control. Supply of tangible goods for use and leviable to VAT/sales tax as deemed sale of goods, is not covered under the scope of the proposed service. Whether a transaction involves transfer of possession and control is a question of facts and is to be decided based on the terms of the contract and other material facts. This could be ascertainable from the fact whether or not VAT is payable or paid.”

12. In the post-Negative Era, Clause (f) of Section 66E provided as under:-

“Section 66E(f)- Transfer of goods by way of hiring, leasing, licensing or in any such manner without transfer of right to use such goods.”

13. A perusal of Section 65(105)(zzzzj) and Section 66E(f) shows that the requirement to fall under such services remains the same, which involves supply of tangible goods without transferring the right of possession and effective control of such goods. Further, the definition also shows that service tax under SOTG is applicable when the goods are provided for use without transfer of right to possession and effective control whereas in the present case, complete control and possession of goods have been given to MHRIL and hence, they are excluded from the levy of service tax.

14. We, therefore, conclude that for the period from 01.07.2012, the appellants have admittedly deposited the service tax, subject to the abatement in terms of the Notification No.26/2012 dated 20.06.2012 and, therefore, they are liable for service tax only to the extent of 60% of the value of the lease rent of the hotel. On the second issue, we also conclude that the appellants are not liable to pay service tax under the category of ‘SOTG’ on the goods as they are part of the premises and are immovable. We are supported by the earlier decision of this Tribunal dated 13.09.2019 in the cae of the appellant.

15. On the issue of levy of penalty, we find that the issue was in the nature of interpretation and the transactions are duly recorded in the books of accounts, which are maintained in the ordinary course of business and, hence, no ground for levy of penalty is made out. The impugned order is hereby set aside and the appeal is accordingly allowed.

[Order pronounced 19th July, 2024]

