(2014) 10 CESTAT CK 0007

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeals No. 1618 Of 2011, 2138 Of 2012

M/s. Paradise Mehak Properties Pvt. Ltd. And Ors. — APPELLANT

Vs

CCE & ST, Jaipur-I — RESPONDENT

Date of Decision : 17-10-2014

Acts Referred:
Finance Act, 1994 — Section 65(105)(zzzz)

Citation : (2014) 10 CESTAT CK 0007

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

Bench : Division Bench

Advocate : Narendra Singhvi, Govind Krishna Dixit, Suchitra Sharma

Final Decision : Disposed Of

Judgement

1. Both the appeals are being disposed of by a common order as the issue involved is common.

2. The appellants are owners of hotel buildings, which are rented by them to M/s. Indian Hotels Company Ltd., who were running a hotel in the said

building.

3. Revenue by entertaining a view that the appellant are under obligation to pay service tax under the category of â??renting of immovable propertyâ??

initiated proceedings against them, which resulted in passing of the present impugned orders. At this stage, we find that the issue is no more res

integra and the Tribunal in the case of Jai Mahal Hotels Private Limited Vs. CCE - 2014-TIOL-992-CESTAT-DEL has held that leasing/renting of

immovable property for a hotel is expressly excluded from the ambit of the taxable service under Section 65(105)(zzzz).

4. By following the said decision, we hold that the appellants were under no tax liability for payment of service tax on the said activity.

5. In addition to the above, in the case of M/s. Lake Palace Hotels & Motels Ltd., there is another demand of Rs.56,364/-, which arises in respect of

the renting of immovable property in respect of another premises. The appellant have discharged their tax liability on the said activity but by treating

the entire consideration, as cum-tax. However, as the appellant have subsequently claimed tax from their customers, Revenue is of the view that cum-

tax benefit would not be available to them.

6. The contention of the appellant is that though they received the tax amount from their customers, the same has not been paid by them as is clear

from the ledger maintained by them. Such ledger can be produced before the Original Adjudicating Authority to substantiate their above plea. We

accordingly remand the matter to the Original Adjudicating Authority to examine and verify the above ledger and their claim that the tax amount has

not been given to them by their customers and to re-decide the issue accordingly. Both the appeals are disposed of in the above manner.

