C.C.E. Vs. C.K.P. Mandal

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Nov-03-2004

Reported in : (2005)(180)ELT471Tri(Mum.)bai

Judge : A Wadhwa, A T V.K.

Appellant : C.C.E.

Respondent : C.K.P. Mandal

Judgement :

1. The issue involved in this appeal, filed by Revenue, is whether the Service Tax and interest paid thereon is refundable to M/s. C.K.P.Mandal.

2. M/s. CKP Mandal work as Mandap Keeper. They entered into a contract with M/s. Shri Saideep Caterers & Decorators (In short Saideep Caterers) for rendering the services of catering and decoration for food in the functions held in their Hall. The Saideep caterers in consideration give the donations to the Respondents. The Saideep caterers had paid Rs.8,35,000/- to the Respondents as donations. The Department regarded this payment as the payment relatable to the service as Mandap keeper chargeable to Service Tax. The Respondents had paid the differential Service Tax on the said amount received by them from Saideep Caterers and subsequently filed refund claim. The Assistant Commissioner, under Order-in-Original No. 59/2002 Dated 22.07.2003, rejected the refund claim filed by the Respondents on the ground that the hirer of Mandap is bound to avail the services of Saideep Caterers and that the donation has a correlation with the

frequency of occupation of the hall and as such the said amount is in relation to the mandap keeping service. On appeal filed by M/s. CKP Mandal, the Commissioner (Appeals), under the impugned Order, has allowed the appeal, holding that Service Tax is leviable only on the services provided by Mandap Keeper to the clients for the use of mandap in any manner which includes the charges for the facilities provided by the Mandap Keeper and the lumpsum amount given by the caterer to the Mandap Keeper is not paid towards hiring of the mandap and catering/decorating services are not provided by the Mandap Keeper.

3. Shri Vimlesh Kumar, Ld. SDR, submitted that Saideep Caterers have been given the exclusive rights for the providing of services of both catering and decorating by the Respondents; that thus their client is bound to compulsorily avail of the services of Saideep Caterers failing which the Mandap shall not be offered for hire and that Saideep Caterers cannot charge the client a price higher than that fixed and agreed upon; that thus the money received by the Respondents is nothing but a consideration covered by the Words in Sub clause (m) of Section 65 (90) of the Finance Act, 1994 which defines the Taxable Service provided by the Mandal Keeper; that the words used are "in any manner including the facilities provided to the client in relation to such use and also the services" and the money received from Saideep Caterers is covered by these words. He contended that the money received by the Respondents is not donation but consideration which is relatable to the service as Mandap Keeper and is liable to service tax. He relied upon the decision in the case of Tamil Nadu Kalyana Mandapam Association vs.

UOI, 2004 (167) ELT 3 (SC) = (2004-TIOL-36-SC-ST) wherein the Supreme Court has held that the Taxable Services "would also include other facilities supplied in relation thereto." 4. On the other hand, Shri S S Phadker, Ld. Advocate for the Respondents, submitted that they only provide Mandap service to their clients; that M/s. Saideep Caterers enters into agreements with the hirer for provisions of catering and decorating services which the Respondents are not party to; that what services are to be rendered by the service provider (Shri Saideep Caterers) to the client is not their concern and no charge is levied by them either to the client or the service provider; that Shri Saideep Caterers are not their agent; that the contract between the caterer and the client is not independent contract; that

Supreme Court has also held in Tamil Nadu Kalyana Mandapam case, supra, Taxable service would include other facilities supplied in relation to Mandap; that they are not supplying any service other than providing the use of mandap for limited period to their client and as such donations received by them from Shri Saideep Caterers is not leviable to Service Tax. He contended that the Respondents do not come in the picture when a contract is entered into between the Caterers and the clients; that the donation is not paid to them for the use of premises but for allowing Shri Saideep Caterers to render services to the clients according to the client's needs' that the Respondents as Mandap Keeper, neither provide any catering services to the client nor provide any facility to the client in relation to these services. He referred to Notification No.21/97-Service Tax, dated 26.6.1997 which exempts the Mandap Keeper from levy of Service Tax on providing facilities for catering; that their case is on a stronger footing as the Respondents do not provide any catering services to the clients. He also mentioned that the catering and decorating services had been provided by other contractor also. He finally mentioned that in any case taxable service only includes service rendered as a caterer and not as a decorator and the service said to be provided as "decorator" cannot be subjected to levy of Service Tax.

5.1 We have considered the submissions of both the sides. Taxable service with regard to a Mandap Keeper means, as per Section 65 (90) (m) of the finance Act, 1994, any service provided,- "to a client, by a mandap keeper in relation to the use of mandap in any manner including the facilities provided to the client in relation to such use and also the services, if any, rendered as a caterer." 5.2 It is not in dispute that the Respondents are mandap keeper as they allow temporary occupation of a mandap for a consideration for organizing any official, social or business function. The only issue to be decided is whether the donations received by them from M/s. Shree Saideep Caterers is to be treated as part of taxable service. The Respondents have entered into two Agreements with Shri Saideep Caterers and Decorators for rendering the services of catering and decorations to the hirers of their community halls. IT is clearly mentioned in both the Agreements that "Hirer always require the services of catering contractors" and "services of Decorators" and as the Trustees, Office bears and the members of the `Managing committee of the Respondents are honorary workers and as such are unable to render these services to the hirers and Shri Saideep caterers have approached them for rendering these services on certain terms and conditions mutually agreed and accepted. As per the terms and conditions, Shri Saideep Caterers shall have the exclusive right to render the services of catering and Decoration, at the rates mutually agreed and specifically mentioned in Schedule "A" attached to Agreements. The other term and condition is that the contractor (Shri Saideep Caterers & Decorators) have agreed to pay a total sum of Rs.2,00,000 (Catering Agreement) and Rs. 1,75,000 (Decoration Agreement) as and by way of contribution to corpus to the Respondents. the Agreements further contain the condition that the Respondents shall not let out their community hall to any such person who refuses to avail of the services of the Decorators and caterers as and when such services are required. IT is thus apparent that the Respondents have entered into two exclusive agreements with Shri Saideep Caters & Decorators for providing the services of catering and decoration to the persons who hire their community hall for social, cultural or religious functions as they are unable to render these services to their hirers. Further, the hirer is bound to avail of these services, if these services are required by them, from Shri Saideep Caterers & Decorators only who have agreed to way contribution to corpus of the Respondents. As such the Respondents are providing the facilities of catering and decoration to their client in relation to use of mandap. the service charges are received by them through Shri Saideep Caterers and Decorators as contribution to their Corpus. As per the definition given in Section 65 (105) (m) of the finance Act, 1994, taxable service includes the facilities provided to the client in relation to use of mandap. The expression "in relation to" is equivalent to 'concerning with' or 'pertaining to' and is expression of comprehensiveness. Thus any service which has a direct or indirect connection with use of mandap has to be treated as "in relation to" mandap and has to be part of the taxable service in respect of which Service Tax has to be levied. Accordingly we set aside the impugned Order and allow the appeal filed by Revenue.