**Hotel Mela Plaza Vs. Cce**

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**SooperKanoon Citation** : sooperkanoon.com/37819

**Court** : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Jan-20-2005

**Reported in** : (2005)(100)ECC95

**Judge** : S Kang, Vice, M T K.C.

**Appellant** : Hotel Mela Plaza

**Respondent** : Cce

**Judgement** :

2. The appellants filed this appeal against the Order-in-Appeal passed by the Commissioner of Central Excise (Appeals). The Commissioner (Appeals) in the impugned Order held that 10% of the bill amount charged as service charges are liable for service tax. The Commissioner (Appeals) confirmed the demand of Rs. 1,18,630 and penalty of Rs. 2,37,260 was imposed on the appellants.

3. The contention of the appellants is that the amount @ of 10% collected from their customers is subsequently disbursed among the staff. Therefore, it is not part of their income. The appellants submitted that as per the provisions of Finance Act 1994, Section 67 (L) provides that "service provided by Mandap keeper to a client shall be the gross amount charged by such keeper from the client". As this 10% is disbursed among the staff, therefore, it cannot be included in the gross amount charged by the appellants from their clients. It is contended that no allegation of suppression can be raised against the appellants as in the bills they were showing this amount separately and the bills were submitted to the proper officer regularly.

The contention of the appellants is that in similar situation, the Asstt.

Commissioner vide Order dated 4th December, 1998, held that this 10% amount is not to be included in the gross amount charged by the Mandap keeper.

4. The contention of the Revenue is that they were charging 10% as service chargers and the customer has to pay this 10% for services received by the clients and this amount is paid to the appellants. The Revenue has also contended that the appeal filed by the Revenue against the Order passed by the Asstt. Commissioner was dismissed on technical ground by the Commissioner (Appeals).

5. In this case, the issue is whether the 10% collected by the appellants from their customers are to be included in the gross amount liable to pay service tax or not. The appellants were charging separately @ 10% as service charges. The customers of the appellants were paying this to the appellants. The only contention of the appellants is that this amount is subsequently distributed among the staff.

6. We find that as per Section 67 of the Finance Act, 1994, provides that for the purpose of this Chapter the value of taxable service is in relation to the services provided by a mandap keeper to a client, shall be the gross amount charged by such keeper from the client for the use of mandap, including facilities provided to the clients, is in relation to such use and also the charges of catering, if any. As the appellants were charging this amount from their customers for providing the services, which is covered under the above-mentioned proviso of law, therefore, we find no merit in the contention of the appellants that this 10% is not liable for service tax.

7. The appellants also pleaded that no suppression can be alleged against the appellants. We find that the appellants never informed the authorities regarding the charging of 10% and not including in the assessment of service tax.

8. In these circumstances, we find that to meet the ends of justice, the penalty is reduced to Rs. 1 lakh from Rs. 2,37,260 otherwise the appeal is dismissed.