IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CENTRAL EXCISE APPEAL NO. 204 OF 2014

The Dukes Retreat Ltd. } Appellant
versus
The Commissioner of Central Excise }
Pune – I } Respondent

Mr. Prakash Shah with Mr. Jas Sanghavi i/b. M/s. PDS Legal for the Appellant.

Mr. Pradeep S. Jetly with Ms. Anamika Malhotra for the Respondent.

CORAM :- S. C. DHARMADHIKARI &
B. P. COLABAWALLA, JJ.

DATED :- OCTOBER 12, 2015

P.C. :-

We have heard both sides and we have perused the order passed by the Tribunal dated 2nd May, 2014.

2) The Tribunal has dismissed the Appeal of the Assessee before us on the ground that the Assessee did not produce the relevant and necessary evidence. The reference to that evidence is made in paras 5 and 6 of the Tribunal's order.

3) Mr. Shah appearing in support of this Appeal would submit that the demand is raised on the footing that the Appellant provided

Mandap Keeper service. The understanding of the Revenue is fallacious because the Appellant runs a resort. Those interested in organising a function or booking a banquet hall, essentially book rooms and the banquet hall so also other facilities for hosting the functions and organising it are incidental. Therefore, in earlier cases, the Tribunal has held that room rent is not taken into consideration towards Mandap Keeper Service.

4) In identical circumstances, the Tribunal held in favour of the Assessee but the Tribunal this time not providing an opportunity to the Appellant to produce evidence in the form of the Chartered Accountant's certificate or otherwise, the Assessee was not in a position to satisfy the Revenue that the present case is similar, is the submission of Mr. Shah.

5) Mr. Jetly, on the other hand, submits that pure findings of fact and on the footing that there is lack of evidence have been rendered and these findings do not raise any substantial question of law. The Appeal is devoid of merits and therefore must be dismissed.

6) We have perused the impugned order of the Tribunal. The Tribunal had before it an Appeal of the Assessee challenging the order of the adjudicating authority confirming the demand of service tax. The

Tribunal was aware of the contentions raised and particularly that in similar cases,the Tribunal had taken a view in favour of the Assessee. The Tribunal also had the contrary contention of the Revenue and which is to the effect that the Assessee has not produced any evidence regarding quantum of room rent by way of producing bills etc.

7) If the Tribunal was of the opinion that such an evidence has not been produced before the adjudicating authority, but a request was made to allow production thereof, then, either the Tribunal should have allowed the production of such evidence, which is material and relevant before it or should have sent the matter back. Either way, the Tribunal has adequate powers and to render justice or to prevent miscarriage of justice.

8) In the circumstances, we are of the view that such an Appeal raises substantial questions of law. It is admitted on the following substantial questions of law:-

> "(i) Whether in the facts and circumstances of the case, the Appellate Tribunal was right in holding that no evidence was produced by the Appellant regarding quantum of room rent notwithstanding the Order-in-Original No. 1/STC/2004 dated 12th March, 2004 of the Deputy Commissioner (STC), Central Excise, Pune – I treating 80% of the consolidated charges collected as room rent?
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> (ii) Whether in the facts and circumstances of the case, the Appellate Tribunal was right inholding that the entire consideration received by the Appellant was towards the conference hall/banquet hall and liable to service tax under Mandap Keeper Service?"

9) Having heard both sides and finding that it is only because the Appellant could not produce the requisite evidence that it has dismissed the Appeal of the Assessee, we are of the view that without expressing any opinion and to subserve larger interest of justice, the opportunity to produce the evidence could have been afforded even by the Tribunal during the course of such Appeal. The Appeal has been dismissed only on a technical ground and for non production of the requisite certificate or proof of room rent being charged and bills raised in that behalf. In the circumstances, the impugned order is quashed and set aside. The Appeal is restored to the file of the Tribunal so as to allow the Appellant to make an application and for production of further evidence, material and relevant to the above controversy. If such an application is made, the Tribunal should decide it in accordance with law. Thereafter, the Appeal shall be decided afresh and by taking into account this evidence which is permitted to be produced in pursuance of our order. However, we clarify that we have not expressed any opinion on the rival contentions and particularly on the demand of service tax and interest. All of them are kept open. The Appeal is allowed accordingly.

(B.P.COLABAWALLA, J.) **(S.C.DHARMADHIKARI, J.)**