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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ SERTA 29/2016 & C.M.Nos.35747-35748/2016

PRINCIPAL COMMISSIONER OF SERVICE TAX, DELHI-1

..... Appellant

Through: Mr.Sanjeev Narula, Sr.Standing Counsel, Mr.Sunil Dalal and Mr.Abhishek Ghai, Advocates

versus

MIS. CHELMSFORD CLUB ..... Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE DEEPA SHARMA

O R D E R

% 28.09.2016

In this appeal, the revenue is aggrieved by the decision of CESTAT which upheld the contentions of the respondents that they were not rendering any taxable services. The respondent is a club and inter alia allows its space especially its "*Mandap Keeper*" on hire for functions to its members.

The relevant facts are that the Assistant Commissioner of Service Tax issued show cause notice on 20.09.2010 to the respondents alleging evasion of duty and suppression of material facts. The respondent club resisted the notice and relied upon the principle of mutuality. The adjudication authority confirmed the show cause notice and demanded `49,50,296/- as service tax and also imposed penalty. The respondent appealed to the CESTAT which relied upon the decision of this court in ***Federation of Indian Chambers of Commerce and Industry vs. CST*** **2014 TIOL 701 (del)** and dismissed the earlier findings of the adjudicating authority. It is contended on behalf of the revenue that the principle of mutuality relied upon by the respondent is inapplicable to the facts of this case because records indicate that the assessee was renting out Mandap Keeper on hire to outsiders besides its members. This contention in the opinion of the court is unfounded. The show cause notice was premised upon the hire out of Mandap Keeper to the members of the respondent club.

In the circumstances, in the absence of a finding based upon allegations in the show cause notice such a contention cannot be countenanced. Otherwise it seems to be no impediment to the application of principle of mutuality relied upon in the ***Federation of Indian Chambers of Commerce and Industry***'s case (*supra*). The appeal is unmerited and consequently dismissed along with the pending applications.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

SEPTEMBER 28, 2016
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