

HIGH COURT OF PUNJAB AND HARYANA

Commissioner of Central Excise Commissionerate, Ludhiana

v.

Mayfair Resorts

ADARSH KUMAR GOEL
AND AJAY KUMAR MITTAL, JJ.

APPEAL NO. ST/1 OF 2011

MARCH 1, 2011

JUDGMENT

Adarsh Kumar Goel , J. - This appeal has been preferred by the revenue under section 35G of the Central Excise Act, 1944 against order dated 28-7-2010 passed by the Customs, Excise & Service Tax Appellate Tribunal, New Delhi claiming following substantial question of law

:—

"(i) Whether Tribunal is justified in holding that the amount of Rs. 35 lakhs surrendered to the Income-tax Authorities is not attributable to consideration received in relation to Mandap Keeper Services?"

2. The assessee is registered with the Service Tax Department under the category 'Mandap Keeper'. During audit for the period of 2004-05, it was noticed by the Department that the assessee surrendered Rs. 35 lakhs to the Income-tax Department as additional taxable income on the said amount being found in cash at the premises of the assessee and the assessee being unable to explain the source of income. According to the department, since only business of the assessee was providing service of 'Mandap Keeper', the amount represented proceeds of services provided by the assessee. Accordingly, amount was subject to service tax *vide* order-in-original dated 28-1-2009. On appeal, the said order was set aside on the ground that without making any enquiry and in absence of any statutory presumption, the department could not treat the amount as representing proceeds of services provided by the assessee. The view taken by the Tribunal to this effect in *Kipps Education Centre v. CCE* [2008] 17 STT 306 (New Delhi- CESTAT) was followed. The said order has been affirmed by the Tribunal.

3. We have heard learned counsel for the appellant.

4. Apart from the fact that it was for the department to show the evasion of service tax and that the money found with the assessee represented proceeds of services provided by it, the Commissioner and the Tribunal have followed an earlier order of the Tribunal. On being asked, learned counsel for the revenue stated that he has no knowledge about the status of the order. When an appeal is filed by the department, the least expected from the counsel for the department is to know the status of the order followed in the impugned order. In absence thereof, the representation by the department can hardly be responsible representation. We hope that the department and its counsel will take appropriate measures in this regard.

5. No substantial question of law having arisen, the appeal cannot be entertained.

6. Dismissed.