

No service tax is to be levied on renting immovable property when sharing profits

The CESTAT, Chennai in ***M/S. Hotel Shreelekha Regency Limited [Service Tax Appeal No. 40073 of 2014 dated July 14, 2023]*** set aside the order demanding service tax on rental property and held that, income received from rent by assessee is not subject to levy of service tax.

Facts:

M/s. Hotel Shreelekha Regency Ltd (**“the Appellant”**) is engaged in hotel business. The Appellant was running a three-star hotel in the name of Hotel Shreelekha Regency since May 10, 2000.

The Appellant entered into an agreement with M/s. Palmgrove Beach Hotels Pvt. Ltd. (Palmgrove) dated February 19, 2005 granting Palmgrove a solely and exclusive right to recommence the hotel to run, conduct, manage, operate, market the same in the name and style as Palmgrove. The right was vested with the possession of the hotel for an initial period of 50 years and renewable for another 50 years.

As per the terms of Clause 9A of the agreement the Appellant is eligible for royalty which is a percentage of operating income. Apart from this, the Appellant is also eligible for an interest free refundable deposit of Rs.11 crores which will be refunded on the expiry of the initial period of the agreement or the renewal.

A Show Cause Notice No.605/2011 was issued to the Appellant dated December 13, 2011 (**“the SCN”**) for the period June 01, 2007 to September 30, 2011 by the Revenue Department to show cause the levy of service tax under renting of immovable property services by invoking the extended period of limitation.

Revenue Department alleged that the Appellant has rented out the immovable property for conducting hotel and other businesses and therefore the Appellant is liable to pay service tax under renting of immovable property service.

The Appellant submitted that the amount received is in the nature of sharing of profits and cannot be considered as rent as the main object of the agreement is to exploit the commercial potential of the hotel business and the use of the immovable property is only incidental and the same cannot be considered as letting of immovable property.

The Adjudicating Authority confirmed duty liability under taxable service 'Renting of Immovable Property' and passed an order ("**the Impugned order**") and held that the consideration is for leasing out the building and the Appellant do not have a say in the day to day / normal running of the hotel in the said property, apart from letting the property to be used by Palmgrove for running hotel in their name.

Aggrieved by the Impugned order the Appellant filed an appeal before the CESTAT, Chennai.

Issue:

Whether renting of Immovable property in nature of sharing profit is leviable for service tax?

Held:

The CESTAT, Chennai in ***Service Tax Appeal No. 40073 of 2014*** held as under:

- Relied upon the judgement of the Hon'ble Supreme Court in ***Commissioner of Service Tax-1, Chennai Vs Grand Royale Enterprises Ltd. [2022(63) GSTL 412 (SC)]***, wherein the Court held that no service tax is liable for renting the property and this is untenable in law.
- Held that, the amount received is in the nature of sharing of profits and the same cannot be considered as rent received for renting / licensing of immovable property as

the intention is not merely to permit the use of space and that the consideration is based on the annual sales.

- Set aside the Impugned order.

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