IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No. ST/51168/2014-CU[DB]

(Arising out of Order-in-Original No.16/Commissioner/Noida/2013-14 dated 31/10/2013 passed by Commissioner of Customs, Central Excise & Service Tax, Noida)

M/s ILFS Clusters Development Initiative Ltd. **Appellant**

Vs.

Commissioner, Customs, Central Excise
& Service Tax, Noida **Respondent**

Appearance:

Shri B. L. Narsimhan (Adv.) & Ms. Tanvi Singh (Adv.) for Appellant
Shri Mohd. Altaf (Asstt. Commr.) AR for Respondent

CORAM:

Hon'ble Justice Shri Dilip Gupta, President
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 11/10/2018
Date of Decision : 11/10/2018

FINAL ORDER NO. - **72448/2018**

Per: Anil G. Shakkarwar

The present appeal is directed against Order-in-Original No.16/Commissioner/Noida/2013-14 dated 31/10/2013 passed by Commissioner of Customs, Central Excise & Service Tax, Noida.

2. The brief facts of the case are that the appellants were engaged in providing services under the category of

'Management Consultant Services' and were registered with the Department for payment of service tax. During the Audit of the records of the appellant it appeared to Revenue that there were certain discrepancies and on the basis of said discrepancies it appeared to Revenue that there was short payment of service tax. Therefore investigations were initiated against them and on the basis of investigation a show cause notice dated 08/10/2012 was issued. As per the said show cause notice the appellant had undertaken implementation of 'Skill Development Programme' aimed at training rural BPL youths in area of textile, leather and pharma industries under Swarnjayanti Gram Swarojgar Yojna implemented by Government of India, Ministry of Rural Development and that the appellant had received amount of Rs.21,12,39,736/- from Government of India and Rs.2,31,67,742/- from other contributors. It appears to Revenue that on the receipt of said amount appellant should pay service tax of Rs.23,44,07,478/-. Further Revenue noticed difference in income reflected in ST-3 returns filed during the period from 2007-08 to 2011-12 and that reflected in the balance sheet for the relevant period. The said difference was to the tune of Rs.15,88,07,829/-. The appellant and Revenue

Authorities exchanged correspondence on the said issue. However, it appeared to Revenue that service tax amounting to Rs.35,82,676/- should be paid by the appellant on the said differential value. Further in respect of services rendered to International Financial Corporation appellant had received an amount of Rs.30 lakhs (approximate). It appeared to Revenue that appellant should pay service tax of Rs.3,30,011/-. On contest the Original Authority has confirmed the demand of Service Tax of Rs.23,83,91,899/- along with interest and imposed equal penalty through impugned Order-in-Original dated 31/10/2013. The allegations, findings and confirmed demand are tabled below:-

Sr. No.	**Allegations**	**Amount**	**Findings**	**Demand Confirmed**
1.	Difference in income reflected in ST-3 Returns and that reflected in the Balance Sheets for relevant period	INR 1,58,80,7829/-	i. Till 2011, liability is on receipt basis and thus no ST payable on amounts not realized. ii. No explanation given for income of INR 54,51,017/- and thus ST (INR 5,61,455/-) payable thereon. iii. Services rendered to SEZ Units are taxable, on which ST of INR 30,21,221/- is payable.	INR 35,82,676/-
2.	Services rendered to International Financial Corporation	3,30,011 Management Consultant	IFC is not notified under Section 3 of the UN Act, 1947 and thus ST is payable thereon.	INR 3,30,011/-
3.	Implementation of skill development program, aimed	21,12,39,736/- And 2,31,67,742/- Grant-in-aid	i. The grant is received on account of training and placement, and not as donation or	INR 23,44,07,478/-

	at training rural BPL youths in area of textile, leather and pharma industries under Swarnjayanti Gram Swarojgar Yojana (SGSY) of the Ministry of Rural Development (MoRD) where under 75% of cost contributed by MoRD and 25% of cost contributed by concerned industries.	distributed in three installments.	grant-in-aid. There is link between amount received and activities undertaken. ii. Exemption for vocational training is not available as no evidence regarding affiliation to NCVT produced. iii. Ultimate objective of activities is to train youths and provide placement and thus covered under manpower supply services.	
4.	If the services rendered at SI. No. 3 (above) are exempt, the appellant is required to reverse Cenvat credit availed on common input services in terms of Rule 6(3) of the Cenvat Credit Rules, 2004.	8% for the period April, 2007 to 06.07.2009, and 6% for the period 07.07.2009 to 31.03.2011; and 5% for the period 2011-12.	As services of vocational training services are taxable there is no question of application of Rules 6(3).	NIL.
5.	Received various services and made payment in convertible foreign exchange to foreign service providers.	6,74,953/-	i. The appellant has shown evidence in support of payment of ST on INR 51,46,913/- and on tax payable on this amount. ii. No service tax payable on amount of INR 26,000/- as it pertains to directors telephone expenses and not towards any taxable service. iii. Service tax is payable on INR 5,80,327/- on training services. **Total**	71,734/- **23,83,91,899/-**

3. Aggrieved by the said order appellant is before this Tribunal. Heard both the sides and considered submissions from both the sides. The individual demands and our findings are recorded hereinafter:-

A. Demand of service tax of Rs.23,44,07,478/-.

(i) The learned counsel for the appellant has submitted that the details of Skill Development Programme for rural BPL Youths under Swarnjayanti Gram Swarozgar Yojana implemented by Ministry of Rural Development of Government of India is available at Page-107 onwards in appeal paper book. He has submitted that object of the said programme was for development of skill of specified number of youths from below poverty line strata of society where 75% of the amount required for imparting training and improving skills was to be borne by Government of India through grant-in-aid and 25% was to be collected from contribution from non-governmental organizations and trained youth were assisted for getting employment on the basis of imparted skills. The contribution from non-governmental organization did not have any relationship between the amount contributed and the number of youth recruited into the contributing organization. He has also referred to a letter dated 23/01/2009 issued by Government of India, Ministry of Rural Development available at Page-136 of appeal paper book wherein at Para-5 it is stated that Central Government share of fund would be released as grant-in-aid in three installments in the ratio of 25:50:25. The learned counsel for the appellant has relied upon the Final Order issued by this Tribunal in the case of Apitco Ltd. vs. Commissioner of Service Tax, Hyderabad reported at 2010 (20) S.T.R. 475 (Tri.-Bang.). He has further submitted that the findings in the said Final Order are affirmed by Hon'ble Supreme Court as reported at 2011 (23) S.T.R. J94 (SC). He has submitted that in the said case the appellant therein received grant-in-aid from Central Government and State Governments for implementation of welfare scheme for various sections of society. The assessee therein did not pay service tax on the said amount. Revenue wanted to levy service tax on grant-in-aid received by the assessee in the said case. This Tribunal held that assessee therein collected grant-in-aid from Government and grant-in-aid was totally utilized for implementation of welfare scheme and nothing over and above said grant-in-aid was received by the assessee and it was concluded that the assessee therein did not receive any consideration for any service to the Government. This Tribunal had held in the said case that service tax was not leviable on grant-in-aid received by the assessee from the Government as Project Implementing Agency of Government. The learned counsel for the appellant has submitted that the amount received for the said programme on which demand of about Rs.23 crores (approximate) of service tax was demanded is not sustainable in view of the said Final Order passed by this Tribunal as affirmed by Hon'ble Supreme Court.

(ii) The learned A.R. for the Revenue has supported the impugned Order-in-Original.

(iii) Having considered the submissions from both the sides, we find that the amount of around Rs.21.12 crores (approximate) was received by the appellant from Government as grant-in-aid and by following decision of this Tribunal in the case of Apitco Ltd. as affirmed by Hon'ble Supreme Court, we hold that service tax is not leviable on the amount received from Government as grant-in-aid. Further, we accept the contention of the learned counsel for the appellant that the contribution received from non-governmental agencies was not in respect of any specific service rendered to the organization from whom the money was received and the money received had no relation with the number of people to be recruited by such organization and therefore, we do not find any service provider and service receiver relationship between the appellant and the organizations from whom contribution of Rs.2.31 crore (approximate) was received by the appellant. Therefore, we set aside the demand of service tax of Rs.23,44,07,478/- alongwith interest and equal penalty.

B. Demand of Service Tax of Rs.30,21,221/-.

(i) Learned counsel for the appellant had submitted that said demand of service tax of Rs.30,21,221/- is part of confirmed demand of Rs.35,82,676/-. He further submitted that learned Original Authority has confirmed said demand on the amount of consideration received for rendering services to SEZ Units. He has submitted that in view of Section 51 of SEZ Act, 2005 the provisions of SEZ Act have affect not withstanding anything inconsistent therewith contained in any other law for the time being in force. He has further submitted that as per clause (e) of Sub-section (1) to of Section 26 of SEZ Act, 2005, every developer and entrepreneur is entitled to exemption from service tax under Chapter V of Finance Act, 1994 on taxable services provided to developer or units to carry on the authorized operations in Special Economic Zone. He, therefore, submitted that the demand of Rs.30 lakhs (approximate) is not sustainable.

(ii) Learned A.R. for the Revenue has supported the impugned Order-in-Original.

(iii) Having considered the submissions from both the sides, we find force in the contention raised by learned counsel for the appellant. Therefore, we set aside the demand of service tax of Rs.30,21,221/- alongwith interest and equal penalty.

C. Demand of Service Tax of Rs.5,61,455/-.

(i) Learned counsel for the appellant has submitted that though the Original Authority has confirmed the demand of Rs.5,61,455/- on consideration of Rs.54,51,017/- received by the appellant, the Original Authority has not given any reason for confirming the said demand. He has submitted that on the basis of difference in the income reflected in balance sheet with that reflected in ST-3 returns, the said amount of Rs.54,51,017/- was treated as consideration without identifying whether the same was received for rendering any service and therefore as held by this Tribunal in the case of Shubham Electricals vs. Commissioner of Central Excise, Rohtak reported at 2015 (40)

S.T.R. 1034 (Tri.-Del.) the said demand is not sustainable.

(ii) Learned A.R. for Revenue has supported the impugned Order-in-Original.

(iii) We have carefully gone through the Final Order passed by this Tribunal in the case of Shubham Electricals (Supra). This Tribunal in Para-11 of the said order has observed as follows: "Neither the show cause notice dated 21/10/2011 nor the impugned adjudication order dated 18/01/2013 record any assertion/conclusion whatsoever as to which particular or specific taxable services the appellant had provided. In the absence of an allegation of having provided a specific taxable service in the show cause notice and in view of the failure in the adjudication order as well, neither the show cause notice nor the consequent adjudication order could be sustained." Relying upon the precedent decision of this Tribunal, we hold that demand of service tax of Rs.5,61,455/- is not sustainable. Therefore, we set aside the same along with interest and equal penalty.

D. Demand of Service Tax of Rs.3,30,011/-.

(i) The learned counsel for the appellant has submitted that appellant had rendered service to International Financial Corporation. The learned Original Authority has held that IFC is not notified under Section 3 of UN Act, 1947 and therefore, there is no exemption for any service rendered to IFC and that therefore he confirmed the demand of service tax of Rs.3,30,011/-. He has submitted that this Tribunal had an occasion to examine whether services rendered to International Financial Corporation are taxable for service tax or not. The said issue was examined in the case of Coastal Gujarat Power Ltd. vs. Commissioner of Service Tax, Mumbai-I reported at 2016 (12) TMI 229 CESTAT, Mumbai. He has submitted that the conclusion drawn by this Tribunal was that service tax is not attracted on the consideration received for rendering services to International Financial Corporation. He has submitted that it is undisputed that amount of Rs.30 lakhs (approximate) was received for service rendered to International Financial Corporation and that the demand of service tax of Rs.3,30,011/- is not sustainable.

(ii) Learned A.R. for the Revenue has supported the impugned Order-in-Original.

(iii) Having considered the submissions from both the sides, we find that the issue of leviability of service tax on services rendered to International Financial Corporation is no more *res integra.* The same has been decided by this Tribunal in the case of Coastal Gujarat Power Ltd. (supra). By following the decision, we hold that service tax is not leviable on services rendered to International Financial Corporation. We, therefore, set aside the demand of service tax of Rs.3,30,011/- alongwith interest and equal penalty.

E. Demand of Service Tax of Rs.71,734/-

The learned counsel for the appellant submitted that they have paid the said amount and they were not pressing the same for relief through this appeal.

4. In view of our observation and findings in all the sub-paras of Para-3, we set aside the impugned order except for the amount of Rs.71,734/- alongwith interest.

5. In above terms the appeal is allowed.

(Pronounced in Court)

Sd/-
(Justice Dilip Gupta)
President

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

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