Customs, Excise & Service Tax Appellate Tribunal

SCO 147-148, SECTOR-17-C, CHANDIGARH-160017

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Appeal No. ST/60620/2017

(Arising out of OIO No. DLI-SVTAX-004-COM-001-17-18 dated 21.04.2017 passed by the Commissioner of Service Tax, Gurgaon)

M/s Mayansh Resources : Appellant (s)

Vs

Commissioner of Service Tax, Gurgaon : Respondent (s)

Represented by:
For Appellant (s) : Shri Vikrant Kackaria, Advocate
For Respondent (s): Shri Harvinder Singh, AR

CORAM :
Mr. Ashok Jindal, Hon'ble Member (Judicial)
Mr. Anil G. Shakkarwar, Hon'ble Member (Technical)

Date of Hearing/Decision: 30.08.2018

ORDER No. A/**63082 / 2018**

Per : Mr. Ashok Jindal

The appellant is in appeal against the impugned order wherein the demand of service tax of Rs. 3,49,66,023/- has been confirmed along with interest and equivalent amount of penalty has also been imposed.

2. The brief facts of the case are that the appellant is a service provider to their principal, namely, E.I. Dupont India Pvt.Ltd under an agreement dated 14.08.2014. As per agreement the following services are provided by the appellant to their principal:-

"Work & Services: Agriculture Extension Services

> *The Service Provider agrees to disseminate the knowledge of DuPont derived through years of scientific research in Crop protection techniques to farmers through training to*
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facilitate better yield and productivity and in furtherance of the above objective perform all of the following functions relating to Agriculture Extension Services & farmer training activities including

(i) Understand problems which a farmer face from pests while growing crops and then performing all farmer training activities.

(ii) Provide feed-back from farmers to Dupont on problems and constraints in crop protection.

(iii) Create a linkage between farmers and Dupont to facilitate Dupont scientists to understand the crop requirement and develop solutions for crop protection.

(iv) Explain the farmers about the manner of usage of Crop protections products including action, mixing process, contact or systematic action, insect killing process.

(v) Create awareness about the crop protection techniques to increase production healthy crop, quality in seed, satisfy for crop.

(vi) Time of application of crop protection products, (1) spray herbicide (2) spray insecticides (3) spray fungicide, (4) Application of Fertilizers, Micro Nutrients and Seed selection.

(vii) How to use insecticides product safely without being unsafe to our body and also our crop product, does and point of purchasing (Shop), per acre dose and per acre water quality.

(viii) Field demonstrations including, area measure, water and dose, crop stage, demo plot location

(ix) Farmer group meetings

(x) Management, commitment and participatory methodologies as a sequel to the feedback from training programmes

(xi) Farmer field day on demo plot, observing the results and then conduct field day.

(xii) Agriculture Extension Services, which cover all operations in relation to farmer training & application of knowledge for better performance of agriculture operations."

3. An audit was conducted in the office of the appellant, it was observed by the audit team that the appellant was working a super distributor for one major pesticides/insecticides manufacturer and were engaged in marketing and promotion of pesticides/insecticide manufactured by their principal. The services undertaken by the appellant are relating to marketing and promotion of pesticides/insecticide which are taxable service under “Business Auxiliary Service”. Therefore, a show cause notice was issued to the appellant for the period January, 2015 to March, 2016 on 13.4.2017 by invoking the extended period of limitation to demand of service tax from the appellant. Thereafter, the matter contested before the adjudicating authority stating that the appellant is providing Agricultural Extension Services to their principal. The matter was adjudicated. By way of impugned order, it was held that the appellant is providing “Business Auxiliary Services” and the demand proposed in the show cause notice was confirmed along with interest and equivalent amount of penalty was also confirmed against the appellant. Aggrieved from the said order, the appellant is before us.

3. The Ld. Counsel for the appellant submits that the identical issue came up before this Tribunal in the case of ***M/s Frontier Agrotech Pvt Limited vs. CCE, Jammu*** (who is in another service provider of M/s E.I. Dupont India Pvt. Ltd.) and this Tribunal vide Final Order No. 62597/2018 dated 01.08.2018 wherein it has been held that the services rendered by the appellant are “Agricultural Extension Services” and are covered under

negative list as per Section 66D of the Finance Act, 1944. Therefore, they are not liable to pay service tax.

4. Heard the parties and considered the submissions.

5. Considering the fact that the issue came up before this Tribunal in the case of *M/s Frontier Agrotech Pvt Limited (supra)* wherein the services in question are identical to the services in hand and this Tribunal after examine the issue held as under:-

> "8. We have gone through the agreement as well as photographs. As per agreement, the appellant is required to provide following services:-
>
> ***"Work & Services: Agriculture Extension Services***
>
> *The Service Provider agrees to disseminate the knowledge of DuPont derived through years of scientific research in Crop protection techniques to farmers through training to facilitate better yield and productivity and in furtherance of the above objective perform all of the following functions relating to Agriculture Extension Services & farmer training activities including*
>
> *(i) Understand problems which a farmer face from pests while growing crops and then performing all farmer training activities.*
>
> *(ii) Provide feed-back from farmers to Dupont on problems and constraints in crop protection.*
>
> *(iii) Create a linkage between farmers and Dupont to facilitate Dupont scientists to understand the crop requirement and develop solutions for crop protection.*
>
> *(iv) Explain the farmers about the manner of usage of Crop protections products including action, mixing process, contact or systematic action, insect killing process.*
>
> *(v) Create awareness about the crop protection techniques to increase production healthy crop, quality in seed, satisfy for crop.*
>
> *(vi) Time of application of crop protection products, (1) spray herbicide (2) spray insecticides (3) spray fungicide, (4) Application of Fertilizers, Micro Nutrients and Seed selection.*
>
> *(vii) How to use insecticides product safely without being unsafe to our body and also our crop product, does and point of purchasing (Shop), per acre dose and per acre water quality.*

(viii) Field demonstrations including, area measure, water and dose, crop stage, demo plot location

(ix) Farmer group meetings

(x) Management, commitment and participatory methodologies as a sequel to the feedback from training programmes

(xi) Farmer field day on demo plot, observing the results and then conduct field day.

(xii) Agriculture Extension Services, which cover all operations in relation to farmer training & application of knowledge for better performance of agriculture operations."

9. We find that the services provided by the appellant in the nature of following:-

"General Farmer training;

Empirical training;

Training for the harvest; and

Stewardship.

The detail of each activities is as under:-

General Farmer Training

Under farmer training, the appellant trains farmers in the best agricultural practices resulting in higher yields. Various factors affected the yields of a crop, such as (i) Soil type and conditions (ii) Time of sowing; (iii) Availability of water; (iv) Availability of nutrients; (v) Weather conditions; (vi) Weed management of water; (vii) Pest management; (viii) Disease control; (ix) Timely harvesting. The appellant trains the farmers in ways to bring the vital yield-affecting factors in its favour. The appellant also lays emphasis on agronomy, nutrition, water management etc. Further, the farmers are made aware of yield parameters.

These trainings are conducted in the following formats:

One to one format wherein Appellant interacts with farmers on one to one basis:

Group format wherein Appellant interacts with a small group of 5 to 10 farmers; and

Farmers meets:

- Small meets wherein Appellant addresses 25 to 30 farmers; and
- Large meets wherein Appellant addresses 50 to 100 farmers.

Empirical training

The appellant also undertakes empirical assignments wherein the theoretical knowledge is to put to application.

Under this category, Appellant takes a portion of volunteering farmer's land, and competes against the farmer's traditional methods. Thereafter, the farmer can clearly perceived the benefits of following modern methods of farming over their traditional methods. Through this, the farmers in surrounding areas too learn about modern methods.

The Appellant also highlights the incorrect practices adopted by volunteering farmer and suggests the farming practice best suited to the circumstances.

Harvesting Days

Various stages are involved in cultivation, such as sowing, tilling, flowering, fruition or pod initiation, pod filling, harvesting etc. The season for harvesting is equally important as the season of sowing. The appellant trains the farmers in the best harvesting practices.

Stewardship

The appellant also conducts programs wherein it intimates precautions required to be observed by farmers during and after application of pesticides. The appellant also teaches farmers the meaning of product labels and signs, cautions farmers about spurious and duplicate products in market, safe destruction of used pesticide bottles, etc."

10. The appellant has provided above services to that effect the appellant has produced photograph. We have seen the photographs. In the photographs, nowhere it is coming out that the appellant is doing marketing and promotion of the product of their principal. Moreover, in the impugned order, the Ld. Commissioner has observed that the "Agricultural Extension Service" is of scientific research and knowledge by observing that "None of the supporting documents which the Noticee have submitted to substantiate their claim that they have been providing Agricultural Extension Service, could show that the farmers were being given any training through scientific research and knowledge to agriculture practices through farmer education and training." We have gone through the definition of agricultural extension under Section 65B (4) of the Finance Act, 1994 which is as under:-

"Agricultural Extension means application of scientific research and knowledge to agriculture practices through farmer education and training."

11. As per said definition, the appellant was required to provide scientific research and knowledge to agriculture practices through farmer education and training. As per agreement, the appellant has provided the said service. The finding of the Ld. Commissioner is not appreciable. Accordingly, the same is turned down.

12. We take note of the fact that the appellant has provided ample evidence in respect of nature of the services provided by them by way of photographs and agreement of other materials but the Revenue has not come with an evidence that the appellant was engaged in the marketing and promoting the product of their principal while providing Agricultural Extension Service. Therefore, we hold that the appellant is not providing any taxable service but is providing only Agricultural Extension Service.

13. Another ground for confirmation of demand is that the appellant is receiving remuneration in terms of sale by the appellant of the product of their principal. In fact, it is only mode of calculation of remuneration of the service provided by the appellant but the same cannot be termed that the appellant received remuneration by way of marketing and promotion or sale of the product of their principal. For that, the appellant is getting separate commission on which they are discharging service tax liability. Therefore, on the basis of remuneration, it cannot be held that the appellant is providing service of marketing and promotion.

14. We further take note of the fact that the Agricultural Extension Services are not taxable under clause of Section 66D of the negative *list which is reproduced as under:-*

"Section 66 (d) services relating to agricultural by way of:

(i) Agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or testing.
(ii) Supply of farm labour.
(iii) Processes carried out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market.
(iv) Renting or leasing of agro machinery or vacant land with or without a structure incidental to its use;
(v) Loading, unloading, packing, storage or warehousing or agricultural produce,
(vi) Agricultural extension services"

> 15. As on merits the services rendered by the appellant are "Agricultural Extension Services" and are covered under negative list as per section 66D of the Finance Act, 1944, therefore, we hold that the appellant is not liable to pay service tax."

As the issue has already been decided in favour of the assessee holding that the service in question do qualify as Agricultural Extension Services and are covered under negative list as per Section 66D of the Finance Act, 1944. Therefore, we hold that the appellant is not liable to pay service tax.

6. In the result, the impugned order is set-aside and the appeal is allowed.

(Dictated & pronounced in the Court)

(Anil G. Shakkarwar)
Member (Technical)

(Ashok Jindal)
Member (Judicial)

G.Y.