CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL CHENNAI

Regional Bench – Court No. III

Service Tax Appeal No. 101 of 2012

(Arising out of Order-in-Original No. 62/2011 dated 11.11.2011 passed by the Commissioner of Central Excise, Chennai – III Commissionerate, 26/1, Mahatma Gandhi Road, Nungambakkam, Chennai – 600 034)

M/s. Aqua Base Container Services, : **Appellant**
No. 61/2B, Ennore Express Road,
Thiruvottiyur, Chennai – 600 019

VERSUS

The Commissioner of G.S.T. & Central Excise, **: Respondent**
Chennai South Commissionerate,
M.H.U. Complex, 692, Anna Salai,
Nandanam, Chennai – 600 035

APPEARANCE:

Ms. Mary Jossy, Advocate for the Appellant

Shri. B. Balamurugan, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. MADHU MOHAN DAMODHAR, MEMBER(TECHNICAL)
HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

FINAL ORDER NO. 40628 / 2019

DATE OF HEARING: 01.04.2019

DATE OF DECISION: 01.04.2019

PER MADHU MOHAN DAMODHAR:

The appellants are engaged in the activity of providing services of maintenance and repair of containers.

2.1 During the course of audit, it was noticed that the appellants had not included the cost of materials used for maintenance and repair services by claiming exemption under Notification No. 12/2003-ST dated 20.06.2003. It was also observed that materials like screws, MS Plates, etc,. are consumed during the course of rendering maintenance and repair services and that no sales tax/VAT was paid on the value of the materials.

2.2 Proceedings were therefore initiated which culminated in the impugned order No. 62/2011 dated 11.11.2011 confirming the demand of Rs. 1,53,92,816/- for the period from October 2004 to September 2009 under Section 73 of the Finance Act, 1994 with interest thereon and also imposition of equal penalty under Section 78 of the Finance Act, 1994. Hence, this appeal.

3. Today when the matter came up for hearing, on behalf of the appellant, Ld. Advocate Ms. Mary Jossy submits that they have fulfilled both the conditions of Notification No. 12/2003 viz., firstly, that no credit of duty paid on such goods and materials sold has been taken and secondly, that such goods and materials have been sold to the service recipient. She submits that copies of invoices indicating the cost of these items to their service recipients had been produced during the personal hearing.

3.2 She further submits that the issue *per se* would be covered by the decision of the Tribunal in the case of ***M/s. Admec Logistics Ltd. Vs. Commissioner of Central Excise, Madurai vide Final Order No. 42489/2017 dated 31.10.2017***.

4.1 On the other hand, Ld. AR Shri. B. Balamurugan appearing on behalf of the respondent submits that no proof has been submitted by the appellants to show that they have paid sales tax on the materials claimed to have been sold to the service recipients.

4.2 He also places reliance on the case law of ***M/s. Truvision Colour Lab Vs. Commissioner of Central Excise, Indore – 2017 (51) S.T.R. 267 (Tri. – Del.)*** which has held that the value of materials used by an assessee while providing photographic service is includible in the assessable value of service and which has also relied upon the Larger Bench decision in the case of ***M/s. Aggarwal Colour Advance Photo System Vs. Commr. of C.Ex., Bhopal – 2011 (23) S.T.R. 608 (Tri. – LB).***

5. After hearing both sides, we find that the Ld. Advocate is correct in her assertion that the matter is indeed covered by the decision in the case of *M/s. Admec Logistics Ltd. (supra)* relied upon by her. Coming to the arguments of the Ld. AR for the respondent that no sales tax has been discharged by the appellant, we find from Notification No. 12/2003-ST that the requirement is that the documentary proof should be produced indicating the value of the said goods and materials sold by the service provider to the recipient of service. This has indeed been produced by the

appellants right from the reply to the Show Cause Notice. There is no requirement in the Notification that proof of payment of sales tax has also to be adduced for becoming eligible to the said Notification.

6. Ld. AR for the respondent has relied upon the ratio laid down by the Tribunal in the case of *M/s. Truvision Colour Lab (supra).* However, the Tribunal decision in *M/s. Admec Logistics Ltd. (supra)*, referred to by the Ld. Advocate for the appellant, has, in fact, relied on the ratio laid down by the Hon'ble Apex Court in the case of ***M/s. Safety Retreading Co. (P) Ltd. Vs. Commissioner of C.Ex., Salem – 2017 (48) S.T.R. 97 (S.C.)***. Hence, we do not find any new grounds or reasons to deviate from the ratio laid down by the Tribunal in the case of *M/s. Admec Logistics Ltd. (supra).*

7. In the event, we hold that the impugned order cannot sustain and will require to be set aside, which we hereby do.

8. The appeal is allowed with consequential benefits, if any, as per law.

(Dictated and pronounced in open court)

(MADHU MOHAN DAMODHAR)
MEMBER (TECHNICAL)

(P. DINESHA)
MEMBER (JUDICIAL)

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