ST/285/2011

CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL CHENNAI

Regional Bench – Court No. III

Service Tax Appeal No.285 of 2011

(Arising out of Order-in-Original No.04/2011-S.Tax/Ch.IV dt. 18.01.2011 passed by the Commissioner of Central Excise, Chennai)

M/s.Stage 3 ACE Eventz Private Ltd. : **Appellant**
Flat No.1, Shivakandam Apartments,
Door No.6, Dr. Vasudevan Road,
Kilpauk
Chennai 600 010

VERSUS

The Commissioner of Service Tax : **Respondent**
692, MHU Complex, Anna Salai, Nandanam,
Chennai 600 035.

APPEARANCE:

Shri V.S. Manoj, Advocate
For the Appellant

Ms. T. Usha Devi, DC (AR)
For the Respondent

CORAM : HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER(TECHNICAL)

FINAL ORDER NO. 40573 / 2020

DATE OF HEARING: 13.02.2020

DATE OF DECISION: 13.02.2020

PER SULEKHA BEEVI C.S

Brief facts of the case are that appellants were providing Event Management Service. On the basis of intelligence gathered that the appellants were not discharging service tax on the entire consideration received for providing such service, investigations were initiated. Records were verified and statements were recorded. It was noticed that though assessee filed ST-3 returns, they had failed to deposit service tax collected from their customers. Assessee made the payment of Rs.32,11,766/- on random basis from April 2004 to October 2008. Verification of invoices raised by the assessee revealed that they were not discharging service tax on the amounts collected on the equipments / goods used for providing Event Management Services. SCN was issued proposing to demand short paid service tax along with interest and also for imposing penalties. After due process of law, original authority confirmed the demand along with interest and imposed penalties. Aggrieved by such order, the appellant is now before the Tribunal.

2.1 On behalf of the appellant, Ld. counsel Shri V.S. Manoj appeared and argued the matter. His submissions as given in writing are summarized as under :

2.2 The Department alleged that the Appellant has not discharged service tax on the gross amount received. The differential value is proposed to tax under the category of Event Management Service together with interest and penalty. The Appellant filed an elaborate reply explaining the nature of receipt and submitted that the tangible goods were supplied and the same is taxable only under the category of Supply of Tangible Goods Service. The Commissioner of Service Tax vide Impugned order confirmed the proposal in the Show Cause Notice.

2.3 The adjudicating authority in Para No.5.1 has concluded that the submission that the consideration received for supply of tangible goods is taxable under Supply of Tangible Goods only is an after-thought since the Appellant has not mentioned the same in their reply. In Para No.5.2 the Commissioner accepted that the break-up is available in the invoice. However, concluded that the amount received is subject to service tax under the category of Event Management Service. The adjudicating authority in Para No.5.3 has concluded that in the absence of registration under the category of Supply of Tangible Goods Service, the plea that the amount received is liable to service tax under the said category cannot be accepted.

2.4 The finding of the adjudicating authority in Para No.5.3 that in the absence of registration under the category of Supply of Tangible

Goods Service, the Department failed to proceed invoking the said category is without considering the position of law that Supply of Tangible Goods Service came into force only with effect from 16.05.2008. In the absence of taxing entry, the question of registration does not arise. The adjudicating authority erred in concluding that the Appellant suppressed the fact from the Department and therefore extended period of limitation is rightly invoked. This finding is without appreciating the fact that there is no liability unless the taxable service is specified in the statute.

2.5 The Appellant submitted documentary evidence to establish the fact that there were separate arrangements for conducting event and for supply of good required for the event. The Appellant also raised separate invoices for the supply of goods and on hire as well as for one time consumption. In the case of one time consumption the value is not liable to service tax even under the category of Supply of Tangible Goods Service as it tantamount to sale of goods. The adjudicating authority ought to have appreciated the fact that these goods were returned back to the Appellant and is being used again for another party. Therefore, by no stretch of imagination the consideration received for supply of goods can be taxes under Event Management Service. The Supreme Court in the case of *Commissioner of Service Tax Vs Bhayana Builders Pvt Ltd* - (2018) 10 GSTL 118 has held that the consideration for providing such service can only be subject to service tax. In other words, the amount received should have direct nexus with the service rendered. Therefore, the impugned order is liable to be set aside in toto.

3. Ld.A.R Ms. T. Usha Devi supported the findings in the impugned order. She adverted to the definition of "Event Management Services" as per Section 65 (40) of the Finance Act, 1994 and argued that appellant had provided the items such as music system etc. for organising the event. The contention of the appellant that the said activity of providing the equipments such as music system etc. used for providing the event would fall under "Supply of Tangible Goods" cannot be accepted. She submitted that these were used for organizing the event and therefore would form part of the gross amount that is charged on the customer. Appellant has entered into separate contracts for Event management as well as for providing various goods used for rendering the event management service. Even if a separate contract is entered for providing the goods used for rendering event management, the amount collected for providing the goods are nothing but expenses for providing the service of event management and has to be included in the taxable value for payment of service tax. She adverted to the annexure to the show cause and the statement of Shri Sunntosh recorded by the department. Appellant has not discharged service tax on the entire consideration received for providing Event Management Service by artificially bifurcating the contracts and therefore the demand confirmed is correct.

4. Heard both sides.

5. The issue in this appeal is the demand confirmed under Event Management Services. It is the case of department, that the appellant has not included the charges collected by them on the equipments / goods provided for the event. Ld.counsel for the appellant has strongly argued that activity of providing goods for conduct of the Event would not form part of Event Management Service; that such activity would fall under the category of 'Supply of Tangible Goods Service' which has become taxable w.e.f. 16.05.2008 only; that prior to this period, the demand of service tax on such amounts cannot be subject to levy of service tax under Event Management Service. Also that they are discharging service tax under the category of Supply of Tangible Goods Service for such activity after 2008. For better appreciation the definition of "Event Management Service" as per Section 65 (40) is reproduced below :

> "event management" means any service provided in relation to planning, promotion, organising or presentation of any arts, entertainment, business, sports, marriage or any other event and includes any consultation provided in this regard."

6. Event Management service includes even the consultation provided in this regard. In the present case, the appellant rendered services like organizing events of Rock shows, Corporate shows, Marriages, Promotions etc. They collected charges for conduct of the events and also provided certain equipments / goods required to conduct the event. The appellant entered into separate contract with

the customer for providing the goods needed for the event and collected charges in the nature of rent. These charges are nothing but expenses for rendering event management service and should form part of taxable value for paying service. This is because without the use of such equipments / goods the appellants would not be able to conduct the event. If the appellant does not own / possess such goods appellant would have to take on hire such goods and then use for providing the service of event management. If that be so, the charges paid by appellant for hiring the goods / equipments would be nothing but expenses incurred for rendering event management service and such expenses would be includable in taxable value for paying service tax. The appellant used their own equipments to conduct the event. The charges collected in the nature of rent from the customer can only be considered as expenses for providing the event management services. Merely because the appellant bifurcated the contract as Event Management Service and for hiring of goods, it cannot be concluded that the charges paid for use of the goods do not fall within Event management Services. It is true that supply of Tangible Goods Services are taxable w.e.f. 16.5.2008. In the present case, the contracts are artificially bifurcated so as to exclude the charges incurred in use of the goods for providing Event Management Services which is not permissible.

7. The Ld. counsel has also relied upon the decision in the case of *CST Vs Bhayana Builders Pvt. Ltd*.- 2018 (10) GSTL 118 to argue that only the consideration that is received for providing the service can be taxed and any other amount cannot be taxed. The issue decided in *Bhayana Builders* is whether free supplies are to be included in taxable value. In the present case, there are no free supplies. The appellant has collected charges for providing the equipments. We do find the facts in the *Bhayana Builders* to have any relevance to the facts of this case. Another decision relied by the Ld. counsel is *Island Aviation India Pvt. Ltd. Vs CGST & CE Chennai* vide Final Order No.40156-40157/2019 dt.18.01.2019. The said decision has been relied by the ld. counsel to argue that when the assessee had entered into single contract in two capacities as sales agent as well as for purchase of cargo slots, the Tribunal held that the activity of sale and purchase of cargo space is not taxable. On perusal of the said final order, it reveals that there is understanding between the parties to engage the appellant in the two activities in the same contract. Further, it is now settled law that purchase and sale of cargo space is not a service. In the present case, for providing event management service, certain activities which fall into the area has been bifurcated into separate contracts so as to reduce the taxable value. We do not find any grounds to rely upon the final order stated supra, as it is not applicable to facts of this case.

8. From the foregoing discussions, we are of the considered view that the demand confirmed along with interest in the impugned order does not require any interference. However, taking into consideration the totality of facts and circumstances of the case, the penalty is set aside invoking Section 80 of the Act. In the result, the impugned order is modified to the extent of setting aside the penalties imposed without disturbing the confirmation of demand or interest thereon. Appeal partly allowed in above terms.

(Dictated and pronounced in open court)

(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

(ANIL G. SHAKKARWAR)
MEMBER (TECHNICAL)

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