IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH, CHENNAI

ST/93/2008

(Arising out of Order-in-Appeal No. 193/2007 (P) dated 28.12.2007 passed by the Commissioner of Central Excise (Appeals), Chennai)

M/s. PSL Limited — Appellant

Vs.

Commissioner of Central Excise, Puducherry — Respondent

Appearance

Shri Raghavan Ramabhadran, Advocate for the Appellant
Shri K.P. Muralidharan, AC (AR) for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing / Decision: 08.08.2017

Final Order No. 41674/2017

Per Bench

The appellants are aggrieved by the rejection of refund claim of the service tax paid erroneously under GTA services.

1.1 The appellants are engaged in the manufacture, inter alia, of spiral welded MS pipes falling under sub-heading 7304 and 7305 of CETA, 1985 and are registered with the Central Excise Department. They are also registered under Business Auxiliary Service with effect from 30.11.2004 for payment of service tax in respect of job work done for coal tar coating on pipes supplied to M/s. IOCL. They were discharging central excise duty on finished products manufactured by them and were also paying service tax in respect of coal tar coating on the pipes received from IOCL. The bid submitted by the appellants on an offer for coal tar coating and polythelene coating of bare pipes was accepted by IOCL on 28.6.2004. On such day of the contract, there was no service tax liability on the activity either under goods transport agency or under business auxiliary service.

2. As per the terms and conditions of letter of acceptance the appellant have to take delivery of pipes from Nagathone (Maharashtra) pipe mill of M/s. Maharashtra Seamless Ltd. for Part I and II and from Bahdurgarh (Haryana) pipe mill of M/s. Surya Roshini Ltd. for Part III. The appellants undertook the job of coal tar coating of the pipes and polythelene coating on the pipes supplied by IOCL and to deliver the coated pipes to the mainline laying contractor as per the instructions of IOCL. Thus as per the contract, the activity undertaken by the appellants inter alia are (i) goods transport agency service for transport of pipes from Nagathone / Bahdurgarh to the factory of PSL Ltd. by Vaiyavoor and (ii) coal tar coating and polytehelene coating. The goods transport agency service was not taxable till 1.1.2005. However, the appellant having registered under the category of business auxiliary service for the purpose of payment of service tax in respect of coal tar coating on the

pipes and thus paid a sum of Rs.67,81,863/- as service tax and a further sum of Rs.1,35,637/- as educational cess totaling to Rs.69,17,500/- on 2.12.2004 for the period from 10.9.2004 to 30.11.2004.

3. Though the appellants were not liable to pay service tax under GTA service as the same was not taxable before 1.1.2005, the appellants paid the service tax on the entire contract value for the period 10.9.2004 to 30.11.2004 which includes the transportation charges pertaining to GTA service. Thus, the appellant filed a refund claim for the refund of service tax paid on the value of transportation which is not a taxable service till 31.12.2004. After scrutiny of the claim, a letter dated 15.12.2005 was issued raising certain queries for which the appellant filed detailed reply. However, a show cause notice dated 23.3.2006 was issued to the appellant proposing to reject the refund claim on the ground that the material evidence by way of documents such as lorry vouchers / consignment notes etc. in support of refund claim is not furnished. The appellant defended the show cause notice and after due process of law, the original authority rejected the refund claim vide order dated 28.9.2006. In appeal, the Commissioner (Appeals) upheld the same. Hence this appeal.

4. On behalf of the appellant, learned counsel Shri R. Raghavan reiterated the grounds of appeal and made the following main submissions:-

i) The appellants provides two services to their clients namely IOC. (a) Business Auxiliary services of coal tar coating on pipes (b) goods transport agency services. They had paid Rs.69,17,500/- as service tax for the period 10.09.2004 to 30.11.2004. During this period only Business Auxiliary Services wax taxable service whereas Goods Transportation Agency services was not taxable. Appellant mistakenly paid service tax on the transportation charges also. Thus they are eligible for refund of service tax paid on transportation charges. In order to avoid the dispute with regard to unjust enrichment, the appellant has limited the claim of refund on the service tax applicable to inward transport only. That they did not claim refund of service tax on the outward transportation charges. That these facts are undisputed.

ii) Since the documents did not show the transportation charges separately, the appellant had arrived at the quantum of service tax applicable to inward transportation by applying a formula. The documents were furnished before the Range officer and the worksheet of arriving the quantum of refund of service tax was also supplied.

iii) The adjudicating authority has wrongly held that unless the transportation cost of bare pipes (before coating) is shown separately in the invoices/voucher, there is no proof for payment of transportation cost. That this question was addressed by the appellants by furnishing the work sheets.

Though freight charges were not shown separately, the cost of transportation is very clearly identifiable from the bills of the transporter. That assuming the transport bills were not available, the entire amount paid cannot relate to Business Auxiliary services (coating service) which is clear from the contract. The appellants supported their claim, by producing bills of transporter, which is based on the rate for transportation contracted with the transporter. That both authorities below erred in observing that the cost of transportation is not supported by proof.

iv) IOC had specifically stipulated that appellant should take delivery of the pipes from M/s. Maharashtra Seamless Limited, Nagathone, Maharashtra and transport the bare pipes to factory at Vaiyavoor. Similarly appellant are also required to transport the bare pipes from Surya Roshini Limited Bahadurgarh to their factory at Vaiyavoor. Thus the contract awarded by IOC clearly stipulated the transportation of bare pipes from Nagathone and Bahadurgarh to their factory by appellants. Accordingly appellant have engaged Supreme Road Carriers for transporting the bare pipes from Nagathone and Bahadurgarh to their factory at Vaiyavoor. The rate of transportation of the bare pipes for 10″ pipes, 12″ pipes and 14″ pipes from Nagathone/Bahadurgarh has been clearly indicated vide the contracts entered into with Supreme Road Carriers and referred to in Para 4.1, 4.2 and 4.3 Supra. Surya Roshini Limited

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indicated the pipe nos., length, weight etc. and prepare a tally sheet. This tally sheet refers to the pipes loaded on the trailor. This trailor is transported by the Supreme Road Carriers under the cover of the consignment note. The consignment note refers to the total length of the pipe and also the actual weight. Similarly in the case of Maharashtra Seamless Limited, delivery challan cum invoice is issued by Maharashtra Seamless Limited for the pipes dispatched to PSL Limited and it is transported by Supreme Road Carriers under cover of a consignment note and challan. In this case also consignment note refers to the actual weight and length of the bare pipes being transported by Supreme Road Carriers from Nagathone to the Vaiyavoor Factory premises of PSL Limited. The bills are raised periodically by Supreme Road Carriers with reference to the number of trailors transported during the month. The bills obviously were raised based on the rate per trailor or pipe indicated in the contract of transportation awarded to Supreme Road Carriers. Hence the entire cost of transportation of bare pipes from Nagathone/Bahadurgarh to the Vaiyavoor Factory premises of PSL Limited is fully supported by consignment notes and the bills raised by Supreme Road Carriers. Thus the cost of transportation is fully supported by documentary evidence.

(v) That it is seen from the contract that the amount paid is inclusive of works contract tax and outward freight. This has to be excluded to arrive at the basic rate and accordingly the basic rate has been indicated. For each of the invoice copies placed on file if these two elements are removed from the contract price it would clearly tally with the basic rate shown in the worksheet. This is explained as under:

1	**Invoice No.1825 dated 4-11-2004 Quantity 308.490 mts. Invoice value**	**Rs.131417.00**
	Contract price per metre	Rs. 426
	Less Works contract tax at 4.2% (426/104.2x 4.2)	Rs. 17
	Invoice rate (basic)	Rs. 409
	Less Outward freight charges	Rs. 25
	Balance = Basic price	Rs. 384
	Basic amount in the worksheet (308.490 mtr x Rs.384)	Rs. 118460

2	**Invoice No.1846 dated 8-11-2004 Quantity 308.660 mts. Invoice value**	**Rs.131489.00**
	Contract price per metre	Rs. 426
	Less Works contract tax at 4.2% (426/104.2x 4.2)	Rs. 17
	Invoice rate (basic)	Rs. 409
	Less Outward freight charges	Rs. 25
	Balance = Basic price	Rs. 384
	Basic amount in the worksheet (308.660 mtr x Rs.384)	Rs. 118535

3	**Invoice No.1801 dated 2-11-2004 Quantity 254.250 mts. Invoice value**	**Rs.115175.00**
	Contract price per metre	Rs. 453
	Less Works contract tax at 4.2% (453/104.2x 4.2)	Rs. 18
	Invoice rate (basic)	Rs. 435
	Less Outward freight charges	Rs. 32
	Balance = Basic price	Rs. 403
	Basic amount in the worksheet (254.250 mtr x Rs.403)	Rs. 102463

4	**Invoice No.1826 dated 4-11-2004 Quantity 254.840 mts. Invoice value**	**Rs.115351.00**
	Contract price per metre	Rs. 453
	Less Works contract tax at 4.2% (426/104.2x 4.2)	Rs. 18
	Invoice rate (basic)	Rs. 435
	Less Outward freight charges	Rs. 32
	Balance = Basic price	Rs. 403
	Basic amount in the worksheet (254.840 mtr x Rs.403)	Rs. 102620

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5	**Invoice No.1501 dated 23-09-2004 Quantity 218.370 mts. Invoice value**	**Rs.112023.00**
	Contract price per metre	Rs. 513
	Less Works contract tax at 4.2% (426/104.2x 4.2)	Rs. 21
	Invoice rate (basic)	Rs. 492
	Less Outward freight charges	Rs. 32
	Balance = Basic price	Rs. 460
	Basic amount in the worksheet (218.370 mtr x Rs.460)	Rs. 100450

Cost of transportation of bare pipe has been clearly identified and conclusively established.

(vi) Thus the observation of the adjudicating authority that the basic rate shown is less than the contract price by about 10% and that appellant has not explained the same is erroneous. Further, that this was not alleged in Show cause notice and no clarification was sought on this aspect.

(vii) That as per Article 265 of the Constitution of India, no tax can be charged or collected without the authority of law. Since appellants are not liable to pay service tax on GTA services for the disputed period the excess paid tax ought to be refunded to them.

(viii) The Learned Counsel relied upon the judgments in the case of *Shriram Bearings Ltd Vs. Commissioner of Central Excise 1997 (91) E.L.T. 255 (S.C.), West Coast Paper Mills Ltd Vs Commissioner of Central Excise, 2004 (172) E.L.T. 493 (Tri.).*

5. Countering the above arguments, the Learned AR Shri K.P. Muralidharan reiterated, the findings in the impugned order. He submitted that on perusal of clause 8.1.0 of the contract, it is seen that contractor will be exclusively liable for

payment of all taxer. So also it is seen that the contract with M/s. IOC is an all-inclusive contract. The adjudicating authority after verification and calling for clarification and reports from the Range officer, has observed that on comparison between the contract price for pipes of various sizes with Basic. Rate details submitted by the assesse it is seen that the Basic Rate shown is lesser by about 10 percent than that of the one mentioned in the contract which has not been properly explained by the assessee at any point of time. The invoice value in the excise invoices raised by the assesse has been arrived at by multiplying the length of the pipe in meters with the above mentioned lesser Basic Rate. Further, the payment term is that 90% of invoice amount shall be paid against receipt and acceptance of coated pipe at the stock pile and that balance 10% will be paid upon lifting of coated pipes by pipeline laying contractor. This had resulted in improper representation of facts at the time of personal hearing. In order to ascertain the freight element to entertain the claim, the assesse was given several opportunities to identify the cost of transportation paid consignment-wise, as it was not feasible to apportion any part of the agreed upon contract price towards transportation.

6. The appellant then had filed written submissions explaining the differences. However though some of the consignment notes tallied, there was non-tally of some other; for example; transport bill No.15 dated 01.11.2004. The

relevant invoices of bare pipes were not furnished to correlate with all annexures. Thus on the basis of different discrepancies as pointed out in the order-in-original, the refund claim was rejected. The appellants have not shown the freight charges separately and the refund claim has been arrived by applying a method/formula to arrive at the transportation cost of bare pipes from the total value of the contract. In such situation as the appellants have not been able to properly point out and quantify. The excess tax paid, the refund claim has been rightly rejected.

7. Heard both sides.

8. The undisputed facts are:

- The appellant has paid service tax of Rs.67,17,500/-.
- That GTA services were not taxable during the relevant period.
- That the transportation costs were not separately shown in the invoices/bills.

9. On perusal of the 'Letter of Acceptance' dated 28.06.2004 issued by IOC shows that IOC gas accepted the bid offer for the jobs detailed therein at a total contract value of Rs.32,03,00,271/-. The work description is as under:-

> "Including taking delivery of following pipes on trailors from Nagothane (Maharashtra) pipe mill of M/s. Maharashtra Seamless Ltd. for Part-I & II (14" OD & 12.75" OD) and from Bahdurgarh (Haryana) pipe mill of M/s. Surya Roshini Ltd. For Part-III (10.75" OD), transportation to coating plant, unloading, handling and storing of bare pipe in coating plant, Coating of Pipes, arranging land for

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stockpile at Asanoor, handling and storage of coated pipes in coating plant, transportation of coated pipe from Coating Plant to stockpile, unloading and stacking of coated pipe at stockpile, storage of coated pipe at stockpile for a free period of two months from the contractual completion period or actual completion whichever is later, security arrangement at stockpile, transit and storage insurance and loading of coated pipes (free from defect) on trailers brought by mainline laying contractor (who will collect the coated pipe from the stockpile)."

10. Thus it is seen that the work carried out includes besides coating of pipes, the inward transportation of bare pipes and outward handling transportation of coated pipes. The appellants thus claim refund of that portion of the service tax which is paid excess by them contending that such service tax is applicable to the transportation charges. They do not dispute the payment of service tax made in respect of activity of coating of pipes which falls under Business Auxiliary Services.

11. As put forward in the contentions of the appellant, the Learned Counsel Shri Raghavan Ramabhadran has strenuously explained the method by which the appellant has arrived at the portion of service tax applicable to transportation services and quantified the same to be Rs.20,11,501/-. The objection or discrepancies pointed out by the adjudication authority in respect of basic rate has also been explained by the Counsel as shown above. We have to say that the adjudicating authority has given much effort to correlate and tally the worksheet/calculations given by appellant with the documents.

The report of the Range officer was called for several times. There are series of letters issued to the appellant requesting for clarifications. The appellant has given reply to such queries. The Range officer reported that appellant had paid sum of Rs.69,17,500/- on 30.11.2004 as service tax and that this was paid on total value of services, and the same was paid from their Cenvat account under protest. Since the Range officers verification report was not specific as to how the appellant had worked out the transportation charges when the same was not separately shown in the invoices, a detailed report was again called for from Range officer who submitted his report as follows:

i) Transportation charges could be obtained from the Transporter's Bill of M/s. Supreme Road Carriers, New Delhi and that the rate could be worked out on the basis of a formula Rate per load of pipes/No. of pipes would give freight per pipe and when divided by average length of the pipe it would give freight per metre of pipe.

ii) Basis of calculation of Service Tax was arrived at by multiplying the quantity shown in the Annexure to invoices by the rate.

iii) Basis of arriving at the Freight was by multiplying the quantity shown in the annexure to invoices by the freight per metre.

He had also submitted copies of sample of invoices, transporter's bills and relevant extracts of the Letter of Acceptance PLM/CTMPL/03/01 dated 28.06.2004 of M/s. IOCL and Rate Table. In spite of repeated queries and clarifications, it appeared that appellant was unable to quantify the element of transportation charges on the total job charges. Thereafter a detailed order has been passed rejecting the refund.

12. We have to say that when Article 265 states that no tax shall be collected except without the authority of law, it is equally important that no tax which is collected under the authority of law is to be refunded unless eligible for refund. Thus even a single rupee if it belongs to the public exchequer cannot be refunded. It is the responsibility of the appellant who applies for refund to furnish necessary details by which the excess duty paid can be easily deciphered. The appellant has to maintain the accounts properly and the documents supporting the transactions should also be proper. The process of refund sanction cannot be such in a manner of conduct of investigation by the department as in cases where demand of service tax is made. The documents supporting the refund claim as well as how the claim is made should be properly accounted and easily determinable. From the totality of facts and evidence placed before us we are of the view that though appellant may have a legal claim, the same is not sufficiently substantiated by evidence. It is also to be noted that though appellant contends

to have made the payment of service tax under protest, the appellant has no case that such amount was made on any demand or coercion made from the department.

13. From the foregoing discussions, we find no ground to interfere with the impugned order. The appeal is dismissed.

(Operative portion of the order was pronounced in open court)

(Madhu Mohan Damodhar) Member (Technical)	**(Sulekha Beevi C.S.)** Member (Judicial)

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