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

ST/24/2011

(Arising out of Order-in-Original No. 13/2010-Commr. dated 29.11.2010 passed by the Commissioner of Central Excise, Customs & Service Tax, Coimbatore).

M/s. Maltanb Construction Engineers (P) Ltd. Appellant

Vs.

CCE, & ST, Coimbatore Respondent

ST/139/2011

CCE, & ST, Coimbatore Appellant

Vs.

M/s. Maltanb Construction Engineers (P) Ltd. Respondent

Appearance

Shri G. Derrick Sam, Advocate,
for the Appellant/Respondent

Shri K. Veerabhadra Reddy, JC (AR),
for the Respondent/Appellant

CORAM :

Hon'ble Smt. ARCHANA WADHWA, JUDICIAL MEMBER
Hon'ble Shri B. RAVICHANDRAN, TECHNICAL MEMBER

Date of Hearing/Decision: **20.12.2017**

FINAL ORDER No. 43445-43446 **/2017**

Per: B. Ravichandran

Both Revenue and the assessee are in appeal against the same order of the Commissioner of Central Excise, Coimbatore.

Customs, Excise & Service Tax Appellate Tribunal

2. The assessee appellants are engaged in providing cleaning services to various establishments. Proceedings were initiated against them for non-payment of service tax in these activities. The case was adjudicated resulting in the present impugned order. The original authority held that the appellants are liable to service tax for the activities of cleaning (specialized mechanical cleaning) of certain hospital buildings.

3. The Ld. Counsel for the assessee-appellant contested the findings of the lower authority on the ground that the four hospital buildings mentioned in the impugned order cannot be considered as commercial buildings as these are charitable trust hospitals with no profit mot~~vation~~ive. He contested the factual findings recorded by the original authority to the effect that they run by charitable trust and these hospitals are independent profit centers. However, he stated that the appellants were discharging service tax in case of private hospitals not recognized as trust or non-profit organization.

4. The Revenue preferred an appeal against the same impugned order, on the ground that the services provided to certain buildings which the adjudicating authority dropped on the ground that these are school buildings are not correct. The Revenue is aggrieved that the status of the recipient of service is relevant rather than the nature of the building, which is totally against the tax entry.

5. We have heard both sides and perused the appeal records.

Customs, Excise & Service Tax Appellate Tribunal

6.1 On the appeal filed by the assessee-appellant, we note that the finding of the original authority is contested on facts. We note that these requires closure examination with relevant basic documents to arrive at a finding whether or not the recipient of service who is owing and managing the said building are to be considered as commercial or a non-commercial entity. We note that a hospital charging a fee for treatment by different amount makes it a commercial establishment to make the building as a commercial building. This aspect requires closure scrutiny as certain facts are being disputed.

6.2 Regarding Revenue's appeal, we note that admittedly the buildings are used for running educational institutions recognized by law. In such context, we note that irrespective of the status of the entity managing such educational institutions, the nature of the building has to be considered. The building being used by a recognized educational institution cannot be considered as ~~non-~~ of commercial in nature. Accordingly, we find no merit in the appeal filed by the Revenue.

6.3 The Ld. Counsel for the assessee-appellant submitted that while the factual details can be re-examined by the original authority based on the supporting evidences he pleaded that the issue involved is purely of interpretation and they had a bonafide belief that hospital buildings are not to be covered by the tax entry of cleaning services. We are in agreement with such submission regarding bonafide belief. Accordingly, the tax liability, if any, as determined by the original authority based on the factual findings, they shall be restricted to the normal period of limitation with no penalty.

7. Both the appeals are disposed of in above terms.

(Order dictated and pronounced in the open Court on)

(B. RAVICHANDRAN)
TECHNICAL MEMBER

(ARCHANA WADHWA)
JUDICIAL MEMBER

BB

Customs, Excise & Service Tax Appellate Tribunal

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