CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.

PRINCIPAL BENCH - COURT NO. II

Service Tax Appeal No. 50061 of 2020-SM
with
Service Tax Miscellaneous Application No. 50312 of 2020
(on behalf of the appellant)
(Arising out of order-in-appeal No. 511(CRM)/ST/JDR/2019 dated 28.05.2019 passed by the Commissioner (Appeals), Central Excise & Central Goods and Service Tax, Jodhpur).

Rajasthan State Road Development Construction Corporation Limited — **Appellant**
Setu Bhawan, Jaipur Agra Bye Pass
Jhalana Doongri, Jaipur.
Rajasthan-302004.

VERSUS

Commissioner, Central Goods, Service Tax and Central Excise, — **Respondent**
G-105, New Industrial Area
Opp. Diesel Shed, Basni
Jodhpur (Rajasthan).

APPEARANCE:

Ms. Surbhi Vyas & Sh. Tushar Sharma, Advocates for the appellant
Ms. Tamanna Alam, Authorised Representative for the respondent

CORAM:

Hon’ble Mr. Anil Choudhary, Member (Judicial)

FINAL ORDER NO. 50491/2022

DATE OF HEARING/DECISION: 31.05.2022

ANIL CHOUDHARY:

Heard the parties.

2. The issue involved in this appeal is whether the appellant-assessee, a company registered under Section 617 of the Companies Act 1956, a Government Company, 100% shares are held by the Rajasthan Government and whether the works contract done by them

through their sub-contractor with respect to laying of pipeline for fresh water, whether the same is exempt from service tax under the provisions of Notification No. 25/2012 dated 20.06.2012, as amended.

3. Brief facts of the case are that during the course of investigation against M/s Jagdish Prasad Agarwal (Proprietor Sh. Jagdish Prasad Agarwal), A-31, Mahi Sarovar Colony, Banswara, Rajasthan, it has been found that appellant had received 'Works Contract Service' from M/s Jagdish Prasad Agarwal during the period July 2012 to March 2015, which is a declared service under Section 66E(h) of Finance Act, 1994 and taxable under Section 66B of Finance Act, 1994 w.e.f. 01.07.2012. Further, as per Notification No. 30/2012-ST dated 20.06.2012, the service recipient is also liable to pay 50% of service tax liability, out of total service tax leviable on works contract services, on reverse charge basis, but appellant failed to pay the same. Accordingly, a show cause notice dated 12.10.2017 was issued to the appellant for demanding service tax amounting to Rs.4,92,028/- alongwith interest and proposing penalty under Section 77 & 78 of the Finance Act, 1994 for contravening the provisions of Section 68 & 69 of the Finance Act, 1994 read with Rule 4 & 6 of the Service tax Rules, 1994. The Adjudicating Authority vide impugned order confirmed the demand amounting to Rs. 4,92,028/- alongwith interest, imposed penalty of Rs. 4,92,028/- under Section 78, also imposed Rs. 10,000/- under Section 77 of Finance Act, 1994 for not taking Service Tax Registration and late fee of Rs. 1,20,000/- for non-filing of six ST-3 returns was also imposed under Section 70 of the Act.

4. The show cause notice was contested on adjudication, where the appellant had inter alia urged that they are entitled to exemption under the Mega exemption Notification No. 25/2012-ST, under Sl. No. 12 and 25 of the said notification which provides for exemption in respect of services provided to the Government, a local authority or a Government Authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of pipeline, conduit or plant for water supply, water treatment or storage treatment or disposal among others. Further, clause 25 of the said notification provides exemption for services provided to the Government, a local authority or a Government authority by way of water supply, public health etc.

5. Further, clause (1) above was substituted by amendment Notification No. 6/2014-ST w.e.f. 11.07.2014, which reads as under:-

> "(a) Caring out any activities in relation to any function ordinarily entrusted to a municipality in relation to water supply, public health, sanitation conservancy, solid waste management or slum improvement and upgradation".

6. Accordingly, the appellant have urged that in view of the aforementioned exemption provisions, the service received by the appellant, A Government of Rajasthan Undertaking, is not taxable and hence there is no liability under the reverse charge mechanism on the 'Works Contract Service' received from their contractor.

7. The Adjudicating Authority was pleased to confirm the demand of Rs. 4,92,028/- under reverse charge mechanism for the receipt of services of Works Contract, from their sub-contractor for laying of pipeline for fresh water, alongwith equal amount of penalty

under Section 78 of the Finance Act. Penalty was also imposed of Rs. 10,000/- under Section 77(a)(1). Further, recovery of late fees of Rs.1,20,000/- (Rs. 20,000/- for each return for six returns) under Section 70 read with Rule 7C of the Service Tax Rules. The appellant filed ST-3 returns for the period from July, 2012 to March, 2015.

8. Being aggrieved, the appellant had preferred appeal before the Commissioner (Appeals) who has recorded the following findings:-

> "I find that the Government of Rajasthan (GOR) formed an undertaking (fully subscribed by GOR) in February, 1979 as "Rajasthan State Bridge and Construction Corporation Ltd.," (and registered under the Companies Act, 1956) to act as a nodal agency for construction of Bridges, Buildings and other Industrial Structure funded by GOR. In 104th meeting of Board held on 25.09.2000 the Board of Directors resolved to rename the company as "RAJASTHAN STATE ROAD DEVELOPMENT AND CONSTRUCTION CORPORATION LTD.," to include the construction of privately finance infrastructure projects, mainly Highways, Bridges and ROB on Built, Operate and Transfer (BOT) system of funding. Thus, the Rajasthan State Road Development and Construction Corporation Limited is a Government Company incorporated on 08 February, 1979 under Section 617 of the Companies Act, 1956.
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> I observe that the RAJASTHAN STATE ROAD DEVELOPMENT AND CONSTRUCTION CORPORATION LTD., (RSRDC) has been established on Public incorporated company on 08 February 1979 under Section 617 of the Companies Act, 1956 and registered with Registrar of Companies having CIN No. U45203RJ1979SGC001853. I find that company has been established by the State Government, but not set up on an act of a State Legislature, hence the first part of definition is not satisfied that RSRDC has been set up by an act of State Legislature.
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> In view of above, I find that M/s RSRDC (Appellant) is neither a Government, nor Local authority or a Government authority, as such I hold that the services received by the appellant has not been covered under Sr. No. 12 & 25 of the exemption Notification No. 25/2012-ST dated 20.06.2012 as claimed by them".

9. Accordingly, he was pleased to confirm the demand and penalties.

10. Being aggrieved, the appellant is before this Tribunal.

11. Learned Counsel for the appellant demonstrates from the order of Government of Rajasthan, Public Works Department No.

F.1(2)(TW/2019)/RK-0035 dated 17.07.2019, by which the Government has appointed Mr. Lokesh Vijayvargiya as Managing Director of the appellant-assessee, who was earlier working as Chief Engineer (NHM) Health Department of the Government of Rajasthan. Learned Counsel also demonstrates from the copy of tender notice and allotment of works assigned and work carried out, as a wing or an undertaking of the Government of Rajasthan. Thus, it is evident that the appellant-assessee is owned and controlled by the Government of Rajasthan. Thus, it is evident that having recorded in the impugned order by the Commissioner (Appeals), wherein he has recorded that the company was registered by the Government of Rajasthan and registered under Section 617 of the Companies Act, 1956. Accordingly, learned Counsel for the appellant prays for allowing the appeal with consequential relief.

12. Learned Authorised Representative appearing for the Revenue relies on the impugned order.

13. Having considered the rival contentions, I find that it is admitted fact that the appellant was set up by the Government of Rajasthan in February, 1979 and registered as a Government Company under Section 617 of the Companies Act, 1956. Initially the company was registered in the name of Rajasthan State Bridge and Construction Corporation Limited, to act as a nodal agency for construction of Bridges, Buildings and other Industrial Structure funded by Government of Rajasthan.

13.1 I further find that the ‘Government Authority’ is mentioned in Sl. No. 25 of the exemption notification, and is further elaborated in definition clause (s) of the said notification, which provides that “Government Authority” means a Board, or an authority or any other body established with 90% or more participation by way of equity or controlled by Government and set up by an Act of the Parliament or a State Legislature to carry out any function entrusted to a municipality under Article 243W of the Constitution.

13.2 I find that admittedly the appellant company is established by the Government of Rajasthan, which owns 100% of the equity and further 100% control is in the hands of the Government of Rajasthan, as is evident, referred to hereinabove. Further, the laying of fresh water pipeline is a work entrusted to a municipality under Article 243W of the Constitution of India. Accordingly, in view of my discussions and findings as above, I hold that the appellant is entitled to exemption under Notification No. 25/2012-ST. Accordingly, I set aside the impugned order and allow the appeal with consequential benefits. Miscellaneous application also stands disposed of accordingly.

(Dictated and pronounced in open Court).

(Anil Choudhary)
Member (Judicial)

Pant