CUSTOMS EXCISE & SERVICE TAX APPLELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH,COURT NO. 1

Service Tax Appeal No. 52772 of 2015

[Arising out of Order-in-Original No. Commissioner/BIL/ST/07/2014 dated 23.12.2014 passed by the Commissioner of Customs & Central Excise, Bilaspur at Raipur]

M/s R.K. Singh & Co. **............Appellant**
Gayatri Mandir Road
Bhadrapara, Balco Nagar, Korba
Chhattisgarh

versus

Commissioner Customs & Central Excise
Bilaspur, Rishi Bhawan, Nehru Chowk **........Respondent**
Bilaspur (Chhattisgarh) at Raipur

APPEARANCE:

Present for the Appellant : Shri Prashant Shukla, Advocate
Present for the Respondent : Shri Ravi Kapoor, Authorised Representative

CORAM: HON'BLE Mr JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE Ms HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

DATE OF HEARING /DECISION: 08.05.2023

FINAL ORDER No. 50646/2023

JUSTICE DILIP GUPTA

The order dated December 23, 2014 passed by the Commissioner has been assailed by M/s R.K. Singh & Co.[1] in this appeal. The order seeks to confirm the demand of service tax with interest and penalty.

2. A show cause notice dated April 02, 20213 was issued to the appellant proposing a demand of Rs. 54,49,215/-. The period of dispute in the present appeal is from April 01, 2007 to

1 the appellant

March 31, 2012. It transpires from the show cause notice that the Department came to know that M/s BALCO, Korba had taken credit of the service tax paid and, therefore, investigation was initiated against the appellant to ascertain whether it had actually paid the service tax. It is on a perusal of the balance sheet of the appellant and the ST-3 returns filed by the appellant that the show cause notice alleges :

> "8.4 **The Noticee have submitted copies of ST-3 returns for the period 2007-08 to 2011-12, Balance Sheet for the period 2007-08 to 2011-12**. The Noticee have not deposed that whether the contract receipt shown in their Balance Sheet for the period 2007-08 to 2011-12, is inclusive of Service Tax amount or otherwise. However, during the statement proceeding on 07.03.2013, Shri Rakesh Singh, Partner of the Noticee categorically deposed that the turn over (contract receipt) shown in the Balance Sheet for the year 2007-08 to 2011-12 is the net receipt which is not inclusive of Service Tax element. **Therefore, it has been implicit that the amount shown in the Balance Sheet for the period April' 2007 to March' 2012 are the basic value (gross contract receipt) and should be taken into account for calculation of Service Tax liability**.
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> 8.5 Accordingly, the taxable value and Service Tax liability is proposed to be determined under Section 72 of the Finance Act, 1994 in this notice as under:
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> (i) The Noticee has furnished information about the value of services rendered/ received. **As per the information furnished by the Noticee through Balance sheet for the period 2007-08 to 2011-12, the Noticee were paid Rs. 15,03,87,703/- (taxable value) during the period from April' 2007 to March' 2012. (ii) As per the credit details supplied** by M/s BALCO, Korba for period 2007-08 to 2011-12, comprehend the Noticee has passed on credit of Service Tax on taxable value of Rs. 6,88,74,225/- against rendering of various service to Ms/ BALCO, Korba. (iii) **As per the copies of ST-3 return submitted, the Noticee have shown contract receipt (taxable value) amounting to Rs. 10,34,19,681/- during the period from April' 2007**

> **to March' 2012. As there is difference in the amounts, hence the higher side amount received by Noticee on account of rendering of various services, is taken into consideration for determination of Service Tax liability for the period 2007-08 to 2011-12**.

8.6 Accordingly, the taxable value and Service Tax liability is proposed to be determined under Section 72 ibid for the year 2007-08 to 2011-12.

8.7 **Annexure-10 to this Show Cause Notice** has been prepared showing the taxable value and Service Tax liabilities thereon.

8.8 Thus, the Noticee are liable to pay total Service Tax amounting to Rs. 54,49,215/- [Service Tax Rs. 52,90,500/-, Education Cess Rs. 1,05,810/- and Secondary & Higher Secondary Education Cess Rs. 52,905/-] on taxable value of Rs. 4,69,68,022/-. This amount of Service Tax is payable by Noticee and the said Service Tax is recoverable from them under Section 73 of the Finance Act, 1994 along with interest under Section 75 ibid."

[emphasis supplied]

3. The appellant filed a reply to the show cause notice contending that not only was the demand not justified, but even otherwise the extended period of limitation could not have been invoked. The Commissioner confirmed the demand by the impugned order for the following reasons :

(i) The appellant had received Rs.2,18,37,227/- in the year 2007-08 for material handling work which is taxable as "cargo handling service";

(ii) Supply of H.S. diesel was taxable as supply of tangible goods service;

(iii) The appellant has not produced evidence to support its claim that it had executed works contracts;

(iv) The extended period of limitation has correctly been invoked because the relevant provisions of the law have been contravened. Imposition of penalties is also justified for the same reasons; and

(v) The alleged taxable value cannot be treated as cum tax.

4. Shri Prashant Shukla, learned counsel appearing for the appellant submitted that the show cause notice is vague and it does not even identify the alleged taxable service and the category of service. Learned counsel pointed out that the demand was proposed merely because there was a difference between the receipts in the profit & loss account of the appellant and the taxable value declared in the ST-3 returns without even identifying the service and the taxable category. Learned counsel also made submissions on merits and also contended that the extended period could not have been invoked in the facts and circumstances of the case.

5. Shri Ravi Kapoor, learned authorized representative appearing for the Department, however, supported the impugned order.

6. To examine the contention advanced by the appellant, it is necessary to examine the show cause notice dated April 02, 2013. Paragraph 8.4 of the show cause notice, which has been reproduced above, mentions that the ST-3 returns and the balance sheet of the appellant had been perused and since the balance sheet shows Rs. 15,03,87,703/- and ST-3 returns show a taxable value as Rs. 10,34,19,681/-, the appellant would have to pay service tax of Rs. 54,49,215/- on the taxable value of Rs. 4,69,68,022/-. It is, therefore, clear that the show cause notice

which was issued for the period April 01, 2007 to March 31, 2012 does not give any reason as to why the amount would be taxable and, if so, then under which category. What transpires from the show cause notice is that the difference between the amount shown in the balance sheet and the ST-3 returns has been construed to be a taxable amount.

7. This issue regarding vagueness of the show cause notice in similar circumstances was examined by a Division Bench of the Tribunal in **Hindustan Zinc Ltd.** vs **Commissioner, Central Excise, Udaipur**[2] and the relevant paragraphs of the decision are reproduced below :

> "10. To appreciate the aforesaid contention, it would be necessary to examine the relevant provisions of section 66 and 66A of the Finance Act. Section 66 is the charging section and it provides that there shall be levied service tax at the rate of 12 per cent of the value of taxable services referred to in various clauses of section 65(105). Section 66A of the Finance Act relates to charge of service tax on services received from outside India.
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> 11. Neither is there any allegation in the two show cause notices nor any finding has been recorded in the impugned order to demonstrate how the provisions of 66 read with 66A of the Finance Act and the Import Rules are attracted. In fact, neither the show cause notices nor the impugned order specify the category of service under which the demand has been confirmed against the Appellant. **The demand has been proposed and confirmed merely because of difference between the figures in the balance sheet of the Appellant and the ST-3 Returns."**
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> **[emphasis supplied]**

8. After placing reliance upon the decisions of the Tribunal in **Shubham Electricals** vs **Commissioner of Central**

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2 **2021 (9) TMI 859 – CESTAT New Delhi**

Excise & Service Tax, Rohtak[3]**; M/s Deltax Enterprises** vs **Commissioner of Central Excise, Delhi-I**[4]**; and N R Management Consultants India Pvt. Ltd.** vs **Commissioner of Service Tax, New Delhi**[5], the Tribunal in the aforesaid decision observed :

> "12. It is well settled that the show cause notice as also the order of the adjudicating authority should specify the taxable service. In this connection reference can be made to the following decisions.
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> 13. In Shubham Chemicals, the Tribunal observed as follows:-
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>> "11. Neither the show cause notice dated 21-10-2011 nor the impugned adjudication order dated 18-1-2013 record any assertion/conclusion whatsoever as to which particular or specific taxable service the appellant had provided. **In the absence of an allegation of having provided a specific taxable service in the show cause notice and in view of the failure in the adjudication order as well, neither the show cause notice nor the consequent adjudication order could be sustained**."
>>
>> (**emphasis supplied**)
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> 14. In Deltax Enterprises, the Tribunal observed as follows:-
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>> "4. In the absence of specific allegation with reference to the nature of service or the service recipient it is not tenable to hold an income of the appellant even if it is admitted to be an actual income, as consideration for a taxable service."
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> 15. In NR Management Consultants, the Tribunal observed as follows:-
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>> **"It is clear that there is no categorical finding as to how the expenditure incurred in foreign exchange can be considered as a payment towards specific category of taxable service and thereafter can be subjected to tax**

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3 2015 (40) STR 1034 (Tri.-Del)

4 2018-TIOL-636-CESTAT-DEL

5 2018-TIOL-813-CESTAT-DEL

> **at the hands of the appellant on reverse charge basis**. We find considerable force in appellant-assesse's plea with reference to presumptive nature of the demand for service tax attributable to expenditure in foreign currency. In fact, the nature of services received by the appellant-assesses with supporting evidence has not been analyzed at all. **In such situation, the finding recorded by the impugned order suffers from serious legal infirmity**."
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> 16. The confirmation of demand on the basis of such a vague show cause notice cannot, therefore, be sustained."
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> **[emphasis supplied]**

9. As noted above, in the present appeal also, the demand has been proposed in the show cause notice only because of the difference between the figures shown in the balance sheet of the appellant and the ST-3 returns. The show cause notice, therefore, is vague. The order passed by the Commissioner confirming the demand on this show cause notice, therefore, deserves to be set aside.

10. The impugned order dated December 23, 2014 passed by the Commissioner is, accordingly, set aside and the appeal is allowed.

(Dictated & pronounced in the open court)

(JUSTICE DILIP GUPTA)
PRESIDENT

(HEMAMBIKA R. PRIYA)
MEMBER(TECHNICAL)

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