CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>New Delhi</u>
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PRINCIPAL BENCH – COURT NO. 4

Service Tax Appeal No. 53345 Of 2018

[Arising out of Order in appeal No. BHO-EXCUS-002-APP-174-18-19 dated 16.05.2018 passed by the Commissioner (Appeals) of Central Tax and Central Excise, Chattisgarh]

Commissioner of CGST and Central Excise, Raipur : **Revenue (s)**
Dhamtari Road, Tikrapara, Raipur, Chattisgarh

Vs

R S Ispat Private Limited : **Assessee (s)**
Plot No 162, 164 & 166, O.P. Jindal
Industrial Park, Punjipathra, Raigarh

<u>with</u>
Service Tax Appeal No. 53511 Of 2018

[Arising out of Order in appeal No. BHO-EXCUS-002-APP-174-18-19 dated 16.05.2018 passed by the Commissioner (Appeals) of Central Tax and Central Excise, Chattisgarh]

R S Ispat Private Limited : **Assessee (s)**
Plot No 162, 164 & 166, O.P. Jindal
Industrial Park, Punjipathra, Raigarh

Vs

Commissioner of CGST and Central Excise, Raipur : **Revenue (s)**
Dhamtari Road, Tikrapara, Raipur, Chattisgarh

<u>APPEARANCE:</u>
Shri S. K. Meena Authorized Representative for the Revenue
Shri B. L. Narsimahan, Ms. Shagun Arora and Shri Kunal Agarwal, Advocates for the Assessee

CORAM :

HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER No. 59898-59899/2024
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Date of Hearing:26.11.2024

Date of Decision:26.11.2024

ASHOK JINDAL

Both sides are in appeal against the impugned order and are disposed of by a common order.

2. The assessee in this case is a manufacturing unit based in Chattisgarh which was engaged in manufacture of MS Steel Billets/Blooms classified under Chapter 72 of Central Excise Tariff Act, 1985. The appellant is having central excise registration for the manufacturing activity undertaken. The assessee had also taken service tax registration for payment of service tax under RCM as recipient of various input services such as manpower recruitment, security service and Goods Transportation Agency, etc. The assessee is part of Company which is having its registered and corporate office at B- 401, City Center, Salt Lake City, Kolkata. The Company had taken a centralized service tax registration No AABCR1890DST001 for two premises located at Kolkata. Therefore, the Corporate-Head Office at Kolkata was registered as a service provider. For Demand Pre-July 2012, the company was part of two 'Agreement for Nomination' both dated 07.04.2010, by virtue of which it had acquired certain rights with respect to sale of immovable properties. These rights were transferred to respective third parties by two 'Agreement for Nomination' dated 12.10.2010, and for which the Company was paid total amount of Rs. 7,83,60,940/-. For Demand Post-July 2012, Agreement for Sale dated 20.06.2009, the Company had entered into an "Agreement for Sale' dated 20.06.2009 with Mr. Subrata Narayan Chowdhary and Mr. Sunil Kumar Gupta (Seller'), for purchasing their

properties measuring about 854.50 decimals, all situated in the District South 24 Parganas, West Bengal (Properties'). As per the Agreement, consideration was agreed as Rs. 54,707 per decimal. An advance consideration of Rs. 15,000 was paid by the Company and the balance was agreed to be paid at or before the execution of sale deed ('Deed of Conveyance') by which the title of Properties would be transferred from Seller to Company. Thereafter, the Company made further payments to the Seller through various cheques, totaling to Rs. 1,55,07,175/- and Rs. 3,12,67,750/- and took possession of the land in question. Suit filed by Company against Seller and Court Decree. The dispute arose between the Company and the Seller with respect to the Agreement for Sale regarding non-execution of Deed of Conveyance in favour of the Company. The Company filed a suit vide Petition No. 1354/2012 against the Seller before L.d. Civil Judge (Jr. Division) 2d Court at Barulpur. However, by intervention of third parties, the Company and the Seller agreed to Terms of Settlement. Through such Terms, it was agreed between the Company and the Seller that a Deed of Conveyance would be executed by the Seller in favour of nominee of the Company. It was also agreed that the consideration for the land in question, already stands paid by the Company to the Seller and no further claim of Seller would lie against the Company or its nominee for the consideration amount.

2.1 Pursuant to above, the Company entered into a Deed of Assignment dated 17.08.2012 ('Deed of Assignment') with Sun View Suppliers Private Limited (Purchaser), it was agreed that the Company would transfer to the Purchaser, all its rights, benefits and obligations arising out of Agreement for Sale dated 20.06.2009. In exchange, the

Purchaser would make the payment of Rs. 1,80,000 per cottah to the Company, at the time of registration of the land in favour of Purchaser. The Terms of the Settlement were decreed by the Civil Judge, (Jr. Division) vide their Decree No. 3 dated 30.08.2012 making such Terms of Settlement part of the court decree. In terms of the said Decree dated 30.08.2012 of Civil Judge, (Jr. Division), read with Terms of Settlement, the suit filed by the Company was disposed. Deed of Conveyance dated 28.09.2012. Consequent to above, the Company, Seller and the Purchaser, entered into a tri-partite Deed of Conveyance for the transfer of title of land from Seller to the Purchaser. It was specifically noted in the Deed of Conveyance that it was being entered into, pursuant to the Decree dated 30.08.2012 of Civil Judge, (Jr. Division).

2.2. In the above background, the assessee unit being part of the Company and registered in Chhattisgarh, was issued SCN dated 01.09.2016, it was alleged that for the period prior to July 2012, the assessee was giving 'real estate agent service and for post July 2012, the assessee was giving 'service' as defined under Section 65B(44) of Finance Act, 1994. Therefore total service tax demand of Rs. 1,37,91,400 (i.e. Rs. 80,71,177 for pre July 2012 and Rs.57,20,223 for post July 2012) was proposed along with interest and penalty.

2.3. The assessee submitted detailed reply that the demand is untenable.

2.4 The Ld. Joint Commissioner, Raipur vide the Order-in-Original dated 31.08.2017 confirmed the entire demand with interest and equivalent penalty.

2.5. Being aggrieved, the Appellant filed appeal before Commissioner (Appeals) Raipur.

2.6. The Ld. Commissioner (Appeals), vide the impugned order, partly allowed the appeal for the period prior to July 2012, setting aside the demand of Rs. 80,71,177 with its respective interest and penalty. However, for the period post July 2012, the Ld. Commissioner (Appeals) upheld the demand of Rs. 57,20,223, along with its respective interest and penalty.

2.7 Aggrieved by the said order, the assessee and department are before us.

3. Learned counsel for the appellant submits that the confirmation of service tax demand by the Office of Commissioner, Central Excise, Bilaspur against the assessee in relation to Income attributable to Kolkata unit, is beyond his territorial jurisdiction, therefore, vitiates the entire proceeding. The assessee unit based in Raigarh is part of the Company which was having its Head Office at Kolkata and the demand was confirmed on audit of the Balance Sheet prepared at Company level. The Company had a centralized service tax registration number at Kolkata. All the agreements that are part of the present proceedings, were entered into by the Company through its Kolkata Head office and the income on which demand has been confirmed was also received and earned at the Company level by the Kolkata Head Office. Therefore, the assessee unit in Raigarh had not entered into any agreements for providing any service. Conjoint reading of all the documents/data, reveal that the assessee unit had never booked any income relating to the agreements in question and it pertains only to Kolkata Office. Therefore, confirmation of service

tax demand on assessee (located in Raigarh) under the proviso to Section 73 of the Finance Act, in relation to an activity/ operation performed by Kolkata Office, is beyond the territorial jurisdiction of the officer in question and unsustainable. Therefore, the impugned proceedings against the assessee be set-aside. To support this contention, he relied on the following decisions:-

- **BCC Contractors & Promoters Pvt. Ltd. vs. Principal Commissioner of Service Tax, Delhi - 1, 2022 (7) TMI 926-CESTAT NEW DELHI**
- **Jindal Steel & Power Ltd. v. Commissioner of Central Excise and Service Tax, Raipur 2024 (5) TMI 201- CESTAT New Delhi**
- **CCE, Jaipur-I v. Tahal Consulting Engineers Ltd., 2016 (44) STR 671 (Tri. - Delhi)**
- **I.T.I. Equatorial Satcom Ltd. v. CCE, Bangalore, 2001 (136) ELT 156 (Tri. - Chennai)**
- **B.L. Mehta Construction P. Ltd. v. CCE & ST, Chandigarh, 2018 (8) GSTL 92 (Tri. - Chan.) Candid Security Services v. CCE & ST, Raipur, 2019 (28) GSTL 281 (Tri. - Delhi.)**
- **Supermax Personal Care Pvt. Ltd. v. UOI, 2021 (377) E.L.T. 399 (Bom.)**
- **CCE, Kolhapur v. Helios Food Additives Pvt. Ltd., 2012 (25) STR 107 (Tri. - Mumbai)**

4. On the other hand, learned AR submitted that the assessee is acting as an intermediary between the 'seller/land owner and the 'purchaser' of the land. They have neither invested any money nor got the land registered in their name at any point of time and are merely acting as a commission agent that is evaluating and managing the deal for the impugned land. It is further submitted that during an audit by the department, it was gathered that the assessee has shown

income towards profit on sale of property for the FY 2011-12 and 2012-13. It was, therefore, appeared that the activity related to sale of property during the said period was covered under the "Real Estate Agent Service" or "Real Estate Consultant" and liable to service tax. This was record, on the basis of scrutiny of records. It is further submitted that the adjudicating authority has held that prior to 30.06.2012, the activity undertaken by the assessee fall under the category of 'Real Estate Agent'. It is his submission that the findings of the learned Commissioner (Appeals) in the impugned order with regard to confirmation of demand of service tax under 'Real Estate Agent' prior to 30.06.2012, is not sustainable. On the other hand, he opined with effect from 01.07.2012 onwards the activities undertaken by the assessee falls within the ambit of definition of service under Section 65B (44) of the Finance Act, 1944 and accordingly they are liable to pay service tax. Learned Commissioner (Appeals) fell in an error while partially allowing the appeal filed the assessee to that extent dropping the demand of service tax of Rs. 80,71,177/- by ignoring the fact that the assessee falls under the category of "Real Estate Agent Service". Therefore, the impugned order qua dropping the demand against the assessee is to be set-aside.

5. Heard the parties and considered the submissions.

6. The main contentions raised by the learned counsel for the assessee is that the show cause notice issued to the asseesse by the office of Commissioner, Central Excise, Bilaspur against the assessee in relation to income attributable to Kolkata Unit, is beyond his territorial jurisdiction as the activity relating to income attributable to

Kolkata Unit who is a registered as service provide at Kolkata. Therefore, whole of the proceedings beyond the jurisdiction.

7. We find that the assessee is located in Raigarh and having its head office at Kolkata. The demand has been confirmed on the basis of audit of the balance sheet of their office at Kolkata which is having a centralized registration number. All the agreements that are part of the present proceedings, were entered into by the company through at Kolkata head office and the income on which demand has been confirmed was also received and earned at the company level by the Kolkata Head Office.

8. As the assessee unit in Raigarh has not entered into any agreements for providing any service, these facts are not in dispute, in that circumstances, it is to be seen that the show cause notice/proceedings initiated against the assessee are beyond the jurisdiction or not ?

9. The said issue has been examined by this Tribunal in the case of **BCC Contractors & Promoters Pvt. Ltd. vs. Principal Commissioner of Service Tax, Delhi (supra),** wherein this Tribunal has observed as under:-

> "It is not in dispute that appellant had taken registration in Rajasthan and Chandigarh on 17.01.2008 and 13.11.2006 respectively. It is also not in dispute that the appellant had obtained centralised registration on 18.07.2008 and had included their office of Rajasthan and Chandigarh in the said centralised registration as well. It is also a fact that the appellant had approached the Revenue for deletion of Rajasthan and Chandigarh address from the centralised registration and the same was allowed on 12.06.2013. All along the appellants were also filing their ST-3 returns separately for Rajasthan and Chandigarh and for the centralised registration (for operations other than in Rajasthan and Chandigarh) in Delhi. In the above factual matrix it can be concluded that the Principal Commissioner of Service Tax, Delhi had no jurisdiction over the activities of the appellant in Rajasthan and Chandigarh. It has not been contested by Revenue that the inclusion of Rajasthan and Chandigarh offices in centralised registration was a mere omission and error on the part of

> the appellant, which was corrected by the Department. In these circumstances, we are of the opinion that the Principal Commissioner Service Tax, New Delhi had no jurisdiction over the appellant and, therefore, the notice issued to the appellant in respect of the appellants operations in Rajasthan, where they were separately registered and filling returns, is without jurisdiction. Consequently, the demand on the first issue cannot be upheld and is, therefore, set aside."

Further, in the case of **Jindal Steel & Power Ltd. versus Commissioner of Central Excise and Service Tax, Raipur (supra)** this Tribunal had an occasion to examine the issue and observed as under:-

> "9. In the given circumstances, it was mandatory for the department as well as the adjudicating authority to take note of the bifurcation which was provided by the appellant at very initial stage of filing reply to the show cause notice and also the C.A. Certificate dated 10:03:2016 filed subsequently, Since these relevant documents have been ignored by the authorities and we do not find any other evidence to show that the total amount shown in the balance sheets for the impugned period from April 2010 to March 2013 on which the service tax amounting to Rs.7,47,14,140/- has been confirmed against the appellant was an amount towards rendering the chartering activity/the service of supplying of tangible goods."
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> 10. We also observe that confirmation of tax demand by the Principal Commissioner, Raipur is against the appellant ie. M/s. JSPL, Raigarh Unit on the income receipt of M/s. JSPL, Delhi Unit in relation to the activities performed by M/s. JSPL, Delhi is not sustainable.
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> 11. Also when some amount was received by Mis. JSPL Delhi. Not only this, confirmation of impugned demand is beyond the territorial jurisdiction of Principal Commissioner, Raipur. We draw our support from the decision of this Tribunal in the case of Commissioner of Central Excise, Jaipur-l Vs. Tahal Consulting Engineers Ltd. reported as 2016 (44) STR 671 (Tri-Del.), wherein it was held that when the services have been rendered outside the jurisdiction of commissionerate issuing the show cause notice and the service tax with respect to said services stands already discharged to the concerned commissionerate, the departmental authority (at Jaipur in that case) has no jurisdiction to proceed against the assessee for demanding service tax without any evidence of taxable service being provided within their jurisdiction Thus, the commissionerate, Raipur had no jurisdiction to issue the show cause notice demanding the tax for such service which was provided by the appellant's unit in Delhi. Order is liable to be set aside on this."

Further, in the case of **Commissioner of Central Excise, Jaipur-I vs. Tahal Consulting Engineers Limited (supra)** again this Tribunal held as under:-

> **"5.** We find that Commissioner (Appeals) examined the respondents appeal against confirmation of demand and allowed the same mainly on the ground that income-tax return cannot be the basis for demanding Service Tax. Further, the respondent's contention that they have rendered services outside the jurisdiction of Rajasthan and have discharged the Service Tax in Chandigarh and Lucknow, could have been verified with the concerned jurisdictional Chandigarh Commissionerate office. Departmental authority at Jaipur have no jurisdiction to proceed against the respondent for demanding Service Tax without any evidence of taxable service being provided within their jurisdiction. We find that there is nothing in the grounds of appeal which makes us to interfere with the finding of the learned Commissioner (Appeals). The appeal did not advert to any assertion as to how the Service Tax demand can be made when there is no evidence to any taxable service having been rendered in the Jurisdiction of Rajasthan. No inquiries have been conducted by the Revenue to support their case. As such, we find that present appeal is without merit and accordingly, the same is dismissed."

Further in the case of **I.T.I Equatorial Satcom Limited vs. Commissioner of Central Excise, Bangalore (supra)**, this Tribunal held as under:-

> **"12.** We have carefully considered the rival submissions and records of the case. We find that the equipment imported was such that the like of which was not manufactured in India by anybody else. We also find that therefore the entire equipment necessary was imported albeit in SKD condition. These imports were cleared through Customs after assessment to Customs duty etc. under that law. We also find that appellants have led significant evidence to show that they were not in possession at the material time of any infrastructure, factory, means of production, work force etc. by which they would have manufactured any component to complete the working of the items imported as a complete Micro Earth Station. Therefore, the only logical conclusion available to us is that the complete Micro Earth Station was in fact in SKD condition and nothing was added to it and that no other components or sub-systems were added to it by the appellants. Such a situation has already been considered by the Tribunal in the case of *British Physical Laboratories India Pvt. Ltd.* supra wherein it was held that when there is only an assembly of the entire components imported, the said assembly does not amount to manufacture. The facts of that case is identical to the facts of the case under consideration. We also take note of the fact that the decision in the case of *Narne Tulaman* relied upon in the impugned order has since been clarified by the Apex Court in the decision of *Mittal Engg.* and *Quality Steel Tubes (P) Ltd.* (supra) to the effect that the question of manufacture therein considered in that decision and therefore the reliance thereon in the order-in-original impugned is also not logically correct. The total picture which emerges out of this case is that nothing was manufactured and that a sophisticated Mirco Earth Station was merely installed/erected at the sites indicated by the NIC which was a body of the Govt. of India. Therefore, applying the ratio of the said decision in the case of *British Physical Laboratories India Pvt. Ltd.,* we hold that no manufacture was involved in such erection/installation of imported Micro Earth Station in SKD condition. While considering the fact that the said erection/installation was done at various cites all

over the country as is available in the paper book as noted above, we find that the Collector of Central Excise, Bangalore had no jurisdiction to issue a demand in the case of those cites which were beyond the geographical jurisdiction of the said Collectorate as exists by the Govt. notification on this issue. A perusal of these locations, we find that a very substantial part of the demand would straight away be hit by lack of jurisdiction even if it were to be held that such installation amounted to manufacture. However, we have not held so as indicated above. Since no manufacture is involved, there is no question of any other excisable goods emerging and of addition of any charges to their assessable value. Therefore, we find that there is no need to go further into whether such advances as well as warranty/maintenance charges were in fact having a nexus with the manufacturing activity or not leading to emergence of any excisable goods.

13. In view of the aforesaid analysis, we find that appeal being only restricted to the two issues noted above, the order-in-original impugned, as far as these two issues are concerned only, is set aside and the appeal is allowed with consequential relief, if any, as per law. The order-in-original impugned has imposed a penalty of Rs. 1 lac basically on the ground that there was manufacture. Since we have held that there is no manufacture as also that there is lack of jurisdiction on very substantial part of the demand, therefore the said penalty is also set aside."

Further, in the case of **B. L. Mehta Construction P. Limited vs. Commissioner of Central Excise and Service Tax, Chandigarh (supra)** this Tribunal has examined the issue and observed as under:-

"6. In this case, at the time of the execution of work, the appellant was not registered with the Central Excise/Service tax department. In that circumstance, the jurisdiction falls where the appellant has executed the work. Admittedly, in this case, the work has been executed at Chandigarh, therefore, the cause of action arose at Chandigarh and the Commissioner of Central Excise, Chandigarh-II has no jurisdiction for the work executed at Chandigarh. In that circumstance, the adjudicating authority has no jurisdiction to adjudicate the impugned show cause notice. Therefore, the impugned order is not sustainable in the eyes of law."

10. Admittedly, without going into the merits of the case, we find that the assessee unit is located in Raigarh which is part of the main company having head office at Kolkata and having central excise registration at Kolkata and the agreements which are the part of the main proceedings were entered into by company through their head office located in Kolkata and income on which the demand has been

confirmed were also received and earned by company level by Head office at Kolkata, in that circumstances, the Commissioner of Central Excise, Bilaspur have no territorial jurisdiction to issue show cause notice or initiated the proceedings against the assessee.

11. In view of above, whole of the proceedings initiated against the assessee impugned are dropped. Accordingly, the impugned order qua confirming the demand against the assessee is set-aside. In view of this, the appeal filed by the Revenue is dismiss and the appeal filed by the appellant is allowed.

(Order dictated and pronounced in the open Court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

G.Y.