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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
CUSTOMS APPEAL BRANCH

Appeal No. ST/576 /2010 - CU[DB] Date **12/05/2011**
ST/S/1016/2010

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S. DHV INDIA PVT. LTD.

(EARLIER NAME M/S. MD CONSULTANT (PVT.) LTD.) B-1/1-1, IST FLOOR, MOHAN CO-OPERATIVE INDUSTRIAL ESTATE, MATHURA ROAD, NEW DELHI
110044

M/S. DHV INDIA PVT. LTD. Appellant

Vs

C.S.T. DELHI Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/177/ 2011 CU[DB]** dated 06.05.11 passed by the Tribunal under **Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax**

Alongwith Stay Order No ST/280/2011

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
C.S.T. DELHI
17-B, I.P. ESTATE, IAEA HOUSE,
NEW DELHI.

2. Adv. / Consult Mr. S. Thirumalai, Adv
C/O Appellant

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New Delhi
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(Customs Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
Court No.IV

ST/Stay No.1016/2010 in ST/Appeal No.576 /2010

(Arising out of order in original No.7/RDN/2010 dated 1.2.2010 passed by the Commissioner of Central Excise , New Delhi)

Date of Hearing: 11.4.2011

For Approval and signature:

Hon'ble Ms Archana Wadhwa, Judicial Member
Hon'ble Mr.Mathew John, Technical Member

1.	Whether Press Reporters may be allowed to see The order for publication as per Rule 27 of the CESTAT(Procedure) Rules, 1982?	Yes
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for Publication in any authoritative report or not?	NO
3.	Whether their lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Departmental Authorities?	NO

M/s DHV India Pvt Ltd — Appellants

Vs

CST, New Delhi — Respondent

Appeared for the Appellant: Shri S. Thirumalai, Advocate
Appeared for the Respondent: Shri Amrish Jain, SDR

Coram: **Hon'ble Ms. Archana Wadhwa, Member (Judicial)**
Hon'ble Mr Mathew John, Member (Technical)

Stay order NO. ST/280/11
Final ORDER No. ST/177/11

Per Mathew John:

The Appellant is providing services as consulting engineer for providing consultancy services for construction of National Highways, providing water supply system in cities, preparing plans for sewerage and drainage etc.. There are different contracts with different clients for the relevant period, which is 2005-06 to 2006-07. In some of the cases the Appellant is providing service to another person who is the main contractor for providing the services required by the client who is the ultimate consumer for the service. The Appellant got registered for payment of service tax and has been paying taxes and submitting returns. While conducting audit of the records of the Appellant during Aug 2008, the officers were of the view that they had short paid service tax due from them on different accounts. A Show Cause Notice detailing the grounds involved and amounts involved was issued to the Appellant demanding differential duty with interest. Penalty under different sections of Finance Act 1994 were also proposed. The SCN was adjudicated vide order dated 01-02-2010. Under this order service tax amounting to Rs.78,80,951/- was confirmed along with education cess of Rs. 1,57,619/- and Higher education cess of Rs. 36,666/-. Interest was demanded. Penalties under different sections of Finance Act, 1994 were imposed. Aggrieved by this order the Appellant has filed this appeal.

2. At the outset the Counsel for the Appellant submits that the demand for the tax amount of Rs. 79 lakhs consists of demands confirmed on account of different issues as under.

Issue No.	**Issue Involved**	**Tax Involved (Rs. Lakhs)**
I.	Interest Demanded on tax due for advance amounts received from the clients prior to 16-06-2005 when amendment was made in the statute to tax advance received.	1
II.	Tax Demanded on Bills raised but amounts	28

	not received	
III.	Tax demanded on value of goods supplied for executing their services	14
IV.	Tax demanded on amounts incurred by the Appellant on behalf of the clients and reimbursed by the clients	36
	Total	79

3. On Issue-I the counsel argues that before 16-06-2005 there was no liability to pay service tax on advances received for executing a service. The requirement was that every assessee had to pay tax when such advances were adjusted for services executed. The Appellant claims that ~~and~~ all taxes have been paid accordingly.

4. On issue-II the contention of the Appellant is that tax can be demanded only on amounts received and not on bills raised.

4. On issue-III, the Counsel contests that exemption under notification 12/2003-ST dated 20-06-2003 is available and there is no question of paying service tax on value of goods sold.

5. On Issue-IV, ~~for~~ the Counsel submits that out of the amount of Rs. 36 lakhs on this count, Rs. 13 lakhs is on account of expenses incurred for getting soil tests done. Remaining 23 lakhs is on account of amounts incurred by the Appellants as pure agent for the clients. He submits that after issue of notification 12/2006-ST dated 19-04-2006 notifying Service Tax (Determination of Value) Rules 2006, the position is very clear that expenses incurred as pure agent will not form part of taxable value of services. Even prior to this date there were clarifications issued by the Board in the matter and for that period also there is no reason to demand tax on such reimbursed expenses. He relies on trade Notice No. 53-C.E. (Service Tax)/97 dated 04-07-1997 issued by Delhi Commissionerate. The Appellant also pleads that some of these reimbursements were for agreements ~~prior~~ executed prior to 19-04-2006

and in such cases service tax cannot be demanded on re-imbursements. The merit of this argument, with reference to time of execution of contract, is not understood. But we leave it to the adjudicating authority to give a finding, when this case is considered afresh.

4. The Appellant also has a plea that in the case of some contracts the Appellant was only a sub-contractor and the service tax should be demanded from the main contractor who had entered into contract with the consumer of the service. The Appellant relies on the decision of the Tribunal in BBR (India) Ltd Vs. CCE Bangalore-III- 2006 (4) STR 269 in this regard.

5. The Ld DR is handicapped in making proper representations because of lack of specific findings by adjudicating authority on Issues II, III and IV in the impugned order.

6. After hearing arguments on both sides we are convinced that the demands confirmed by the impugned order cannot be enforced on the basis of the said order because there are many infirmities with the order and the matter requires more detailed consideration of facts and law.

7. So we decided to waive the requirement of pre-deposit under section 35F of Central Excise Act for admission of appeal. Thereafter the Appeal itself was considered.

8. We find the O-in-O discusses Issue-I in some detail and discusses Issue-IV in a sketchy manner. Issue-II is not seen recorded in the O-in-O. It is not clear whether this issue was raised before the adjudicating authority. It is possible that this issue has got jumbled with Issue-I. Since the matter is any way being sent back for de-novo consideration the Appellant is allowed to submit the details of Bills for which amounts have not been received by them, to the adjudicating authority during de-novo consideration. Issue-III was raised before the adjudicating

authority (sub-paras 12 (iv) (r) to (w)) but no finding on this issue is seen. On Issue-IV, the finding is seen in para 18 of the order. The findings is only a statement as follows,-

> "It is well settled law that if any amounts are received in connection with various expenditure incurred on behalf of one's client which are directly related to the services rendered by such person service tax will be levied on such expenditure. I further find that the fact of paying service tax now on such expenditure, claimed to be incurred by the notice as a pure agent of their client itself shows that the expenditure had not been incurred by the noticee as a pure agent but was related and necessary for providing services".

9. The basis for statement that law is settled is not explained. The issue has not been examined with reference to Rule 5 (2) of Service Tax (Determination of Value) Rules 2006. Since Issue-III and Issue-IV have not been dealt with properly, we consider it necessary to send the case back to the adjudicating authority.

10. In the circumstances we set aside the Order-in-Original and remit the matter to the adjudicating authority keeping all issues, both factual and legal, open. The de-novo order should among other issues, if any, state,-

(i) Evidence, if any, submitted by the Appellant showing amounts billed but against which no payments were received. If such amounts are proposed to be taxed the reason should be stated.

(ii) Evidence, if any, for value of goods sold for execution of contract submitted by the Appellant and whether the appellant is eligible for concession under notification 12/2003-ST. If not why not.

(iii) Evidence, if any, submitted by the Appellant, regarding amounts which were incurred by the Appellant as pure agent and if so whether he is eligible for exclusion of value of such items as per provisions in Rule 5 (2) of Service Tax (Determination of Value) Rules 2006 and if not why not. This issue needs to be examined separately for the period prior to Notification of the said rules on the basis of instructions issued by the Board and case laws on the matter.

11. Under each of the above issues amounts involved where the Appellant has executed works as a sub-contractor of a main contractor should be indicated separately. A finding should be given whether on such amounts, the sub-contractor is liable to pay tax.

12. It is needless to say that the onus is on the Appellant to first give separate worksheets showing invoice numbers, date and amount involved in respect of each issue separately. Thereafter they should produce evidence which they are claiming to be having. Such evidences along with detailed submissions should be submitted to the adjudicating authority within 60 days of receipt of this order without further notice in this regard. Thereafter the adjudicating authority shall give personal hearing and issue a speaking order which will enable the Tribunal to decide on grievance if any without further remand to lower authority.

13. Both Stay Application and Appeal are disposed of in the above terms.

(Archana Wadhwa)
Member(Judicial)

(Mathew John)
Member(Technical)