IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. III

DATE OF HEARING : 02/01/2017.
DATE OF DECISION : 18/01/2017.

Service Tax Appeal No. 311 of 2012

[Arising out of the Order-in-Original No. 36-ST/PKJ/CCE/ADJ/2011 dated 29/11/2011 passed by The Commissioner of Central Excise (Adjudication), New Delhi.]

M/s Petronet LNG Limited | Appellant

Versus

CCE, New Delhi | Respondent

Appearance

Ms. Mannat Waraich, Advocate – for the appellant.

Ms. Neha Garg, Authorized Representative (DR) – for the Respondent.

CORAM: **Hon'ble Shri S.K. Mohanty, Member (Judicial)**
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No. 50386/2017 Dated : 18/01/2017

Per. B. Ravichandran :-

The appeal is directed against order dated 29/11/2011 of Commissioner of Service Tax (Adjudication), New Delhi. The appellants were engaged in setting up and maintaining an LNG Terminal at Dahej in Gujarat. They have entered into various agreements and contracts with different companies situated abroad for receiving scientific, professional, consultancy and technical services for their project. On verification of the accounts and documents of the appellant, the Revenue entertained a view that the appellants did not discharge service tax on various services received by them from foreign entities under reverse charge mechanism in terms of Section 66A of Finance Act, 1994. Accordingly, proceedings were initiated which resulted in the confirmation of service tax of Rs. 32,69,277/-. Penalty of equivalent amount under Section 78 and Rs. 5,000/- under Section 77 of the Finance Act, 1994 were also imposed on the appellant.

2. The learned Counsel for the appellant submitted that the service tax demand against the appellant is relatable to two issues covering the period 2006-2007 and 2007-2008. On the first issue, the Revenue considered the services rendered by M/s Baker Bott, U.S.A., as Management or Business Consultant Services in terms of Section 65 (105) of the Finance Act, 1994. The learned Counsel submitted that M/s Baker Bott is an international law firm based in Washington, U.S.A. and are involved in providing legal services. The appellant engaged their services in connection with extension of their LNG Terminal at Dahej, Gujarat. The learned Counsel elaborated the scope of service based on proposals made by the appellant and invoices raised by the service provider.

3. On second issue of services received from International Financial Corporation (IFC), the learned Counsel submitted that the IFC was set up by an international agreement to supplement the activities of World bank. Eligible projects in member countries were financed by IFC. Various charges like document processing charges etc. were borne by the appellant while obtaining loan from IFC. The IFC engaged third party, namely, KFW Entwicklungs Bank for undertaking due diligent on the appellant for confirming the credit worthiness of the appellant. The learned Counsel submitted the invoices raised by these two service providers, to elaborate that these are with reference to loan considered by IFC for the appellant. The International Finance Corporation (Status, Immunities and Privileges) Act, 1958, provides immunity and privilege from taxation in respect of transactions with IFC. Section 3 of the said Act readwith Section 9 will make it clear that the operations and transactions authorized by the agreement shall be immune from taxation and custom duties. The learned Counsel submitted that the Original Authority erred in holding that the exemption is only available to IFC and not to the person dealing with IFC.

4. The learned AR reiterated the findings of the lower authority. He submitted that the immunity given to IFC from taxation cannot be extended to the appellant who had transaction with IFC.

5. We have heard both the sides and perused appeal records. On the first issue, we find that the appellants engaged M/s Baker Bott of U.S.A. in connection with extension project of their LNG terminal. We have perused request for proposal for selection of International Legal Consultant and also the billing made by the service provider. It is clear that the appellant called for proposals for selecting International Legal Consulting firm to provide various legal advisory services in relation to the project. On careful consideration to the scope of the proposal as well as bill raised by the service provider it is clear that the appellants received mainly legal consultancy service and not management or business consultant service. We also note that the finding of the Original Authority that the said legal firm did not represent the appellant in any Court or legal proceeding and, hence, the service is not legal consultancy, is fallacious. The scope of legal services encompasses advisory services also. We note that the law firm engaged by the appellant rendered service including advisory, legal opinion, documents and correspondence, reviewing etc. All these are in the field of contract law. We find the reasoning and findings of the lower authority devoid of merit and is unsustainable.

6. On the second issue relating to tax liability of the appellant on their transaction with IFC, we note that the appellants have approached IFC for a loan arrangement and in connection with the same expenditures were incurred by them directly with IFC and also with third party appointed by IFC for due diligence. We

note that the IFC Act 1958 clearly provides for immunity of all transactions and operations of IFC. Apparently transaction will involve another person with IFC. We find the reasoning recorded by the Original Authority that immunity granted by the IFC Act will not apply to the party who is dealing with IFC is totally misplaced. In this connection, we refer to final order No. A/93164/2016 – ST (B) dated 17/10/2016 of the Tribunal in the case of **Coastal Gujarat Power Ltd. vs. CST, Mumbai – I**. In the said decision, the Tribunal examined the immunity to IFC and its implication. It was held that the said Act of 1958 is to honour international agreement and specifically to provide immunity to the operations of service provider in their tax liability. Any law contrary to the said immunity cannot prevail. The issue has been discussed at length and the Tribunal concluded that there is no separate exemptions required as the transaction of IFC were made immune to tax in terms of IFC Act.

7. In view of the above discussion and findings, we find the impugned order is legally unsustainable. Accordingly, the same is set aside. The appeal is allowed.

(Order pronounced in open court on 18/01/2017.)

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

PK