IN THE CUSPTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing/Decision:15.12.2016

Service Tax Appeal No.839/2012

[Arising out of Order-in-Appeal No.18/2012(ST)-4202 dated 21.03.2012 passed by the Commissioner of Central Excise, Jaipur-I]

Rajasthan State Road Development & Constn.Corpn.Ltd. Appellants

Vs.

CCE, Jaipur-I Respondent

Appearance:

Rep. by Shri Ankit Shah, Advocate for the appellant.
Rep. by Shri Ranjan Khanna, DR for the respondent.

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

Final Order No.56396/2016

Per B. Ravichandran:

The appeal is against order dated 21.03.2012 passed by the Commissioner of Central Excise, Jaipur-I. The appellants, an undertaking of Rajasthan Government engaged in various activities of civil construction, maintenance & repair of buildings, roads, etc. The impugned order concluded the proceedings against them with reference to demand of service tax of Rs.75,96,94,000/- covering period of 2005-06 and 2009-10. The impugned order, after detailed examination of the various work orders which were subject matter of demand, confirmed service tax liability of only Rs.5,83,75,191/-.

2. Ld. Counsel appearing on behalf of the appellant submitted that they are basically involved in the civil construction of various buildings, maintenance & repair of various buildings as well as construction, maintenance, management and repair of roads in terms of various contracts with the clients. He further submitted

that based on the evidence submitted by them about the non- commercial nature of various civil contracts work, the Original Authority dropped the substantial demand of almost Rs.70 crores originally raised against them. The present liability confirmed by the impugned order basically falls under three categories:-

(a) Construction of new buildings;

(b) Management, maintenance or repair of buildings and

(c) Management, maintenance or repair of roads.

3. On category (b) and (c), ld. Counsel submitted that the management, maintenance or repair were all for non-commercial Government buildings or roads. The Government amended the tax entry vide Finance Act, 2012, (Section 97 and 98 of the said Act) to give full exemption retrospectively for such activities from 16.06.2005. Ld. Counsel submitted that substantial part of the demand now confirmed will not survive in view of the said retrospective amendment. Regarding category (a) construction of new building, it is submitted that wherever there is commercial construction, like building of AIIMS, Jodhpur, they have paid service tax. However, it is his contention that the present demand confirmed is with reference to various buildings, which are non-commercial buildings. He further submitted that the Original Authority did not consider their plea in right perspective and confirmation was made on the ground that certain documents were not produced. He submitted that written contracts of similar buildings were produced corroborating their submissions.

4. Ld. AR on behalf of the Revenue submitted that, in many cases, the appellant did not produce the relevant contracts or work orders to substantiate their claim regarding non-commercial nature of the buildings. It is also his submission that very nature of the recipients and their status will show that the activities are for commercial buildings.

5. We have heard both the sides and perused the appeal records.

First of all, we note that the amendments brought in by the Finance Act, 2012 regarding retrospective exemption for two categories of services regarding new construction of buildings and Management, maintenance or repair of buildings and management, maintenance or repair of roads with effect from 16.06.2005 are having relevance to the appellant. As the amendments were carried out later, the same is not available before the Original Authority. As such, it is necessary to remand the matter back to the Original Authority to examine the applicability of the said amendments to the various work orders executed by the appellant. This requires verification of all work orders. Since the matter has to go to the Original Authority on this ground, the third issue regarding the nature of civil construction carried out by the appellant also requires re-examination as the appellants are now pleading that they will establish their submissions with supporting evidences. We make it clear that wherever the appellant collected service tax irrespective of the exemption or non-coverage of tax entry, the appellants are liable to deposit the same with interest. This aspect also requires examination.

6. In view of the above analysis and discussion, we set aside the impugned order and remand the matter back to the Original Authority to decide the case afresh. The appellant shall be given adequate opportunity to present their case including personal hearing.

[order dictated and pronounced in the open court]

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

Ckp.