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

Date of Hearing/Decision:23.01.2017

Appeal No.ST/55148/2013(DB)

[Arising out of Order-in-Original No.Commissioner /RPR/S.Tax/63-64/2012 dated 25.09.2012 passed by the Commissioner, Central Excise & Service Tax, Raipur]

M/s.Radius Water Ltd. Appellants

Vs.

CCE & ST,Raipur Respondent

Appearance:

Rep. by Shri B.L. Narsimhan, Advocate & Shri Karan Sachdeva, Advocate for the appellant.
Rep. by Shri Sanjay Jain, DR for the respondent.

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

Final Order No.50491/2017

Per B. Ravichandran:

The appellant is aggrieved by the order dated 25.09.2012 of Commissioner of Central Excise, Raipur. The appellants are engaged in supply of water to M/s. Chhattisgarh State Industrial Development Corporation (CSIDC) in terms of the agreement entered into with erstwhile M.P. State Industrial Development Corporation in 1998. In terms of the agreement, the appellants are to own, develop, operate and maintain water supply in Borai Industrial Growth Centre. The appellants were paid by CSIDC as per the tariff agreed upon for supply of water. Revenue entertained a view that the arrangement between the appellant and the CSIDC, for such supply of water, will be covered for service tax purpose under the category of "Support Services of Business or Commerce" under Section 65(105) (zzzq) of Finance Act, 1994 read with Section 65 (104) (c). Accordingly, the proceedings were initiated against the appellant, which concluded by the impugned order with confirmation of service tax demand of Rs.2,26,26,164/-. Various penalties were also imposed on the appellant under Section 76, 77 and 78 of the Finance Act, 1994.

2. Ld. Counsel for the appellant contested the findings in the impugned on the following grounds:-

(a) Elaborating the terms of the agreement, it is submitted that the agreement is basically for sale of water, which involves development of facilities, maintenance and continued supply of water on agreed tariff rates to CSIDC. The agreement is between two parties on principal to principal basis with no involvement or knowledge to third party.

(b) The statutory definition of "Support of Business or Commerce" talks about mainly outsourced services of such nature like evaluation of prospective customers , telemarketing, processing of purchase orders and fulfillment services which also includes processing, support service and other transaction processing. The reading of the definition will clearly show that one party outsources their work with reference to their business. The nature of such activities were covered in the scope of tax entry. Supply of water on sale basis is not covered by the tax entry, more specifically "Infrastructure Support Service" mentioned therein.

(c) The agreement with CSIDC as well as the periodical invoices raised for receiving consideration will clearly show the transaction as pure sale transactions and cannot be taxed for service. The impugned order refers to supply of water by CSIDC to various industrial consumers to contend that the appellant provided business support in such activities. As clearly mentioned under clause 5.3, Note-I of the agreement, the appellant has nothing to do with the actual users of the water i.e. various industries/units/companies, etc.

(d) CSIDC is using the water supplied by the appellant for various designated purposes, which is not having any bearing to the sale of water by the appellant as they have no dealing or knowledge or control of ultimate usage of the water.

3. Ld. AR contested the submissions of the appellant. He specifically drew our attention to para 6.3 of the impugned order. CSIDC is mandated to promote industries in the state. As part of their work, Borai Industrial Growth Centre was developed by them. In order to have assured water supply, CSIDC entered into an agreement with the appellant. In this connection, already existing assets of CSIDC were transferred to the appellant to further develop the project to supply water. The whole arrangement is for supporting the business of CSIDC and as such, they are liable to pay service tax under the category of "Infrastructure Support" for the business.

4. We have heard both the sides and perused the appeal records and written submissions.

5. The impugned order upheld the liability of the appellant to service tax for the amount received by the appellant towards water supply to CSIDC. We have carefully perused the agreement as well as findings in the impugned order. First of all, we note that the agreement entered into in 1998 between the appellant and the

erstwhile MPSIDC is for development, operating, maintaining water supply, sharing risks etc. The agreement clearly deals with the responsibility of the appellant as well as MPSIDC (later CSIDC). The appellant were given the right of operation and maintenance for basic 20 years after the construction of the project. The tariff structure as per the Clause 5.3 of the agreement stipulates the sale price of water by the appellant to CSIDC. The transaction is between the appellant and the CSIDC with no involvement of third party. This is clear from Note-I under the tariff structure in the agreement. Further, CSIDC has been treated as consumer of water (Clause 5.3 E) for payment of taxes on water supply to the concerned State Department. We find that the whole scope of the agreement is for supply of water by the appellant to CSIDC on a fixed tariff. CSIDC, thereafter supplied the water to various industrial units is of no consequence for the said arrangement as far as the appellant is concerned. In such situation, giving colour of service to pure sale of water is not legally tenable. One more aspect of the case is the scope of the statutory definition in the tax entry for BSS. The tax entry reads as below:-

> "Support Services of Business or Commerce" means service provided in relation to business or commerce and includes evaluation of prospective customers, telemarketing, processing of purchase orders and fulfillment services, information and tracking of delivery schedules, managing distribution and logistics, customer relationship management services, accounting and processing of transactions, operational assistance for marketing, formulation of customer service and pricing policies, infrastructural support services and other transaction processing.
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> Explanation- For the purpose of this clause, the expression "infrastructural support services" includes providing office

along with office utilities, lounge, reception with competent personnel to handle messages, secretarial services, internet and telecom facilities, pantry and security;]."

6. Plain reading of the statutory definition will indicate that the scope of tax entry is basically for outsorcing service of such nature and do not dealt with any sale or purchase of items without reference to third party. As already noted, there is no reference to third party in the agreement or the transaction between the appellant and CSIDC. To call such sale of water, on a project developed, owned and maintained by the appellant as infrastructure support service is not tenable. The water supplied was paid for by the CSIDC and the water tax on the same was also paid by them as a consumer of the said water.

7. On careful considering the above discussions and findings, we find the activities falling under the scope of the agreement 1998, for consideration on sale of water, cannot be taxed under the category of "support of services of business or Commerce". The impugned order is not legally tenable.

8. Accordingly, we set aside the same and allow the appeal.

[order dictated and pronounced in the open court]

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

Ckp.