CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi, Court No. 1

Date of hearing/decision: 06.02.2017

Service Tax Appeal No. 56505 of 2013

(Arising out of order- in- appeal No. 239/BPL/2012 dated 13.12.2012 passed by the Commissioner (Appeals) Central Excise, Customs & Service Tax, Bhopal).

M/s HEG Limited Appellant

Vs.

CCE&ST, Bhopal Respondent

Appearance:

Shri Narendra Singhvi, Advocate for the appellant
Shri J. P. Singh, AR for the Revenue

Coram:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. Ashok K. Arya, Member (Technical)

F. O. No. 50696/2017

Per: **Justice (Dr.) Satish Chandra**:

The present appeal is filed against the order-in-appeal No. 239/BPL/2012 dated 13.12.2012 passed by the Commissioner (Appeals) Central Excise, Customs & Service Tax, Bhopal. The period in dispute is from May 2006 to March, 2008.

2. The brief facts of the case are that the appellant are engaged in the manufacture of excisable items. During the period under consideration, the appellant has given donation to various charitable institutions like Bhagwan Mahaveer Viklang Sahayata Samiti, Indore, Helpage India etc. In the books of account, the appellant has shown the said payment under the head of the

sponsorship payment. So, the department has raised the service tax demand on the sponsorship services. Penalty and interest under Sections 77 and 78 of the Finance Act, 1994 were also levied. Being aggrieved, the present appeal is filed by the appellant.

3. With this background, we heard Shri Narendra Singhvi, ld. Advocate for the appellant and Sh. J. P. Singh, ld. AR for the Revenue.

4. After hearing both the sides, written submission, and on perusal of record, it appears that the appellant has claimed that in the book of account there was inadvertent mistake as the payment was shown under the heading of "Sponsorship". Neither there was any advertisement nor there was any event. This was merely a donation for the said institutions.

5. On the other hand, Sh. J. P. Singh, ld. AR for the Revenue justified the impugned order. He submits that Ojaswini Mahotsav, 2007 and other organiser have asked the sponsorship amount from the appellant, so he submitted that the department has rightly brought the payment under the sponsorship services.

6. By considering the totality of facts and circumstances of the case, it appears that if the amount was paid to the recipient societies without any sponsorship or without any advertisement than the payment cannot be brought under the service tax specially when the entire payment was claimed under Section 80G of the Income Tax Act being donation. If the amount or part of it was paid for organising the event or sponsorship then the same is subject to the service tax as per Rule 2(1) (d)(vii) of the Service Tax Rules, 1994 read with Section 77 and 78 of the Finance Act, 1994.

7. In the instant case, the lower authorities have brought the entire amount without making any study/ bifurcation as mentioned above under the category of sponsorship services. During the course of argument, ld. Counsel for the assessee submits that they had produced the proof of donation before the lower authorities but the same was not considered by the lower authorities who demanded service tax in an arbitrary manner. However, they are ready to produce the same again.

8. In view of above, we set-aside the impugned order and remand the matter to the adjudicating authority to decide the issue denovo in the light of above discussion but by providing an opportunity of hearing to the appellant. Additional evidence, if need be, may be admitted as per law.

9. In the result, appeal filed by the appellant is allowed by way of remand.

(Dictated and pronounced in the open Court).

(Ashok K. Arya)
Member (Technical)

(Justice (Dr.) Satish Chandra)
President

Pant