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

Date of Hearing/Decision: 8.2.2017

Appeal No. ST/56080/2013- DB

(Arising out of Order-in-Original No. 233/S.Tax/D-I/12 dated 5.12.2012 passed by the Commissioner of Central Excise (Appeals), New Delhi)

M/s J.V. Capital Services (P) Ltd. Appellant

Vs.

CST, Delhi Respondent

Appearance

Shri Narendra Singhvi, Advocate - for the appellant

Shri Sanjay Jain, D.R. - for the respondent

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

Final Order No. 50802/2017

Per Justice Dr. Satish Chandra:

The present appeal is filed against the Order-in-Original No. 233/2012 dated 5.12.2012.

2. The brief facts of the case are that during the period under consideration (April 2004 to September, 2009), the appellant was working as a stock broker in the security exchange. In the present appeal, the dispute is regarding the amount collected from the client other than the commission and brokerage. The department brought that amount under the "over and above" heading of Rule 5(2) of the

Service Tax (Determination of Value Rules), 2006. The same was confirmed by order in original. Being aggrieved, the appellant has filed the present appeal.

3. With this background, Shri Narendra Singhvi, ld. Counsel submits that whatever amount is collected in the name of stamp duty and security transaction tax, the same was deposited. Sometimes, the payment is received late and for belated payment, the delayed charges have been collected. He also submits that the appellant collected the charges in lumpsum but paid stamp duty and security transaction tax as per law. He submits that in the instant case Rule 5(1) of the Service Tax Rules, 2006 has already been set aside by Delhi High Court in the case of ***Intercontinental Consultants & Technocrats Pvt. Ltd. Vs. UOI* -** 2013 (29) STR 9 (Del.) Finally, he submits the entire demand under this order is not justifiable.

4. On the other hand, Shri Sanjay Jain, ld. Counsel for the department submits that the amendment was made on 18.4.2006 in the said rules where "over and above" was brought to the tax which was not deposited in the Govt. Exchequer. Hence, the lower authority has rightly brought in the clutches of service tax by the Revenue. He further submits that as per Rule 5(2) of Service Tax (Determination of Value), Rules, 2006 for the belated charges,

necessary relief has been given by the lower authorities. He also submits that for the period prior to 18.4.2006, the appellant is entitled to the benefit, which has already been granted. But for the post period 18.04.2006, the appellant will have to pay service tax. Lastly, he justified the impugned order.

5. By considering the rival submissions and on perusal of the written submission, it appears that the amendment came in the Service Tax Determination of Valuation Rules, 2006 with effect from 18.4.2006. Prior to it, the appellant is entitled for the benefit but the same was not provided by the lower authority. However, post period to 18.4.2006, the appellant is liable to pay the service tax on the "over and above" amount collected from the clients but not deposited to the Govt. exchequer. In this context, the Board has issued Circular No.187/107/2010-CX-4 dated 17th Sept. 2010, where it was observed that:

> "4. Since the stamp duty and Security Transaction Tax, are the liability of the buyer/seller of securities and the broker pays the same acting as a pure agent the same are not includible in the taxable amount in terms of Rule 5(2) of the Service Tax (Determination of Value) Rules, 2006. All other charges by whatever name called recovered by the broker from the buyer/seller of securities are includible in the taxable value in terms of Rule 5(1) of the Service Tax (Determination of Value) Rules, 2006.
>
> 5. From the above, it is clear that in case the expense is the liability of the service provider it has to be included in the taxable value. In case it is the liability of the service receiver and the service provider pays the

> same acting as a pure agent then such amount is not includible in the taxable value."

6. In the instant case, it appears that for the period prior to 18.4.2006, the lower authority has not given the credit to the appellant for which the appellant is entitled. Hence, we modify the impugned order and allow the benefit prior to the period 18.4.2006. For the post period, we confirm the order of the lower authority.

7. The impugned order is modified accordingly.

8. In the result the appeal filed by the appellant is partly allowed.

(Dictated & pronounced in open Court)

(Ashok K. Arya)
Member (Technical)

(Justice Dr. Satish Chandra)
President

RM