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. 60299 of 2013

(Arising out of order- in- appeal No. 77(VC)ST/JPR-I/2013 dated 28.07.2013 passed by the Commissioner of Central Excise, (Appeals-I) Jaipur).

M/s BCC Developers and Promoters Pvt. Ltd. Appellant

Vs.

CCE, Jaipur Respondent

Appearance:

Shri Vijay Kumar, Advocate for the appellant
Dr. Neha Garg, AR for the Revenue

Coram:

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

F. O. No. 50797/ 2017

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

The present appeal is filed against the order- in- appeal No. 77(VC)ST/JPR-I/2013 dated 28.07.2013 passed by the Commissioner of Central Excise, (Appeals-I) Jaipur.

2. The brief facts of the case are that the appellant during the period under consideration from April 2005 to March, 2010 was providing the construction services to mainly three parties i.e M/s BHEL; M/s Kirloskar Brothers Limited; and M/s Rajasthan Atomic Power Projects. The appellant claimed that the services provided by them in all the cases were covered under the heading "Works Contract Services" which was introduced w.e.f.

01.06.2007 and cannot be classified under “Commercial or Industrial Construction” services prior to 01.06.2007, but the appellant for a short period in the case of M/s Rajasthan Atomic Power Projects has paid the service tax under the heading “Commercial or Industrial Construction” services. Later, the appellant claimed that the services were provided under the heading “Works Contract Service” but the department has declined the plea of the appellant and brought the services for the entire period under the heading “Commercial or Industrial Construction” services. Accordingly, the department demanded the service tax alongwith penalty and interest. Being aggrieved, the present appeal is filed by the appellant.

3. With this background, we heard Shri Vijay Kumar, ld. Counsel for the appellant and Dr. Neha Garg, ld. AR for the Revenue. We also perused the record and written submissions and gone through the bulky paper book.

4. From the record, it appears that for the short period pertaining to M/s Rajasthan Atomic Power Projects, the appellant has paid the service tax under this head “Commercial or Industrial Construction” service. But for the previous period and subsequent period the appellant claims that services are covered under the heading “Works Contract Services”, which was introduced w.e.f. 01.06.2010. From the record, it also appears that the entire period is subject to service tax. Hence, the appellant is liable to pay service tax for the entire period from April 2006 to February, 2010.

5. Regarding the argument that the appellant was working under the bonafide belief, it may be submitted that this is a statutory demand and the appellant has already paid the service tax under “Commercial and Industrial

Construction" services in case of M/s Rajasthan Atomic Power Project. When it is so, then the extended period was rightly invoked. Hence, we are of the view that for the entire period, the service tax is leviable under the heading "Commercial and Industrial Construction" service.

6. Ld. Counsel for the appellant took another plea by stating that tax was already paid by the principal on the same service. So, again no tax can be demanded. To support his arguments, he cited the following case laws:-

(i) ***Vijay Sharma & Co. vs. CCE, Chandigarh – 2010 (20) STR 309 (Tri. LB).***

It was observed that no provision to avoid double taxation in Finance Act, 1994 but the same is single point tax law without multiple taxation.

(ii) ***Urvi Construction vs. CST, Ahmedabad – 2010 (47) STR 302 (Tri. Ahmd.)***

It was observed that service tax paid by main contractor – charging tax on sub-contractor again amounts to taxing same service twice.

(iii) ***Viral Builders vs. CCE, Surat – 2011 (21) STR 457 (Tri. Ahmd).***

It was observed that there cannot be double taxation where services rendered by a person through another person.

6.1 We agree with the submission of the ld. Counsel that no double taxation is permissible under the law. The Constitution (Article 265) provides to take the exact amount of tax i.e. neither more nor less. In the instant case, if the principal has already paid the service tax, then the same cannot be demanded from the appellant. As per the clarification of the Board Circular dated 23.08.2007 as well as dated 07.10.1998, if the principal had not paid the service tax then the same can be charged. If the service tax has already been paid by the principal, then the same cannot be demanded again.

7. With the above observations, we remand the matter for a limited purpose, as stated above to the adjudicating authority. After verifying the documents, original adjudicating authority will also examine the argument pertaining to cum-duty benefit. For the limited purpose i.e. double taxation (computation pertaining to double taxation), the matter is remanded to the adjudicating authority.

8. In the result, the appeal is partly allowed by way of remand.

(Dictated and pronounced in the open Court).

(Ashok K. Arya)
Member (Technical)

(Justice (Dr.) Satish Chandra)
President

Pant