CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-DB

COURT –II

Service Tax Appeal No.ST/514/2012-ST [DB]

[Arising out of Order-in-Original No.08/2011 dated 27.12.2011 passed by the Commissioner, Customs, Central Excise and Service Tax, Indore].

Service Tax Appeal No.ST/59994/2013-ST [DB]

[Arising out of Order-in-Original No.20/COMMR/ST/IND/2013 dated 10.07.2013 passed by the Commissioner, Customs, Central Excise and Service Tax, Indore]

Madhya Pradesh Audyogic Kendra Vikas Nigam India Ltd. …Appellant

Vs.

C.C.E., Indore … Respondent

Present for the Appellant : Mr. Rajesh Kumar T.R., C.A.
Mr.Manish Ladha, C.A.
Present for the Respondent: Mr. Neha Garg, D.R.

Coram: HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. ASHOK K. ARYA, MEMBER (TECHNICAL)

Date of Hearing/Decision: 27.02.2017

FINAL ORDER NO. 52463-52464/2017

PER: ASHOK K. ARYA

1. The appellant M/s. Madhya Pradesh Audyogik Kendra Vikas Nigam is in appeal (No.514/2012-ST) against Commissioner's Order No.8/2011 dated 27.12.2011 where-under the demand of Rs.1,93,40,637/- (for Development charges, Street Light charges, road cutting charges) for the period of 16.05.2005 to 31.03.2010 have been confirmed alongwith interest and equivalent amount of penalty.

2. There is one more appeal (No.59994/2013) with broadly similar facts filed by the same appellant, Madhya Pradesh Audyogik Kendra Vikas Nigam Indore Ltd. against Order-in-Original No. 20/2013 dated 10.07.2013 passed by the Commissioner, Indore where-under the demand for the period of 01.04.2010 to 30.09.2011 of Rs.73,08,224/- alongwith interest and equivalent penalty has been confirmed against the appellant.

2.1 In the case of the appeal No.**59994/2013** the appellant mentions that the impugned order confirms the demand even in case of the amount collected for the service of road cutting charges, whereas the appellant has been pleading that under Notification No. 24/2009-ST dated 27.07.2009 such service charges have been excluded from the purview of levy of service tax.

3. The appellant has been represented by the ld. Advocate Shri Rajesh Kumar and the Department has been represented by Dr. Neha Garg.

4. Both sides have been heard in detail and their submissions and the records have been carefully perused.

5. The ld. Advocate for the appellant mentioned that the impugned order dated 27.12.2011 already dropped the demand on the interest. The matter now concerns with the service tax demand on development charges, street light charges and road cutting charges. In the case of road cutting charges, the ld. Advocate refers to Notification No. 24/09 dated 27.07.2009 and Section 97 of Finance Act, 1994. The Notification 24/09 – ST (supra) exempts payment of service tax in relation to the services provided by any person in relation to management, maintenance or repair of roads. Section 97 of the Finance Act, 1994 also says that no service tax shall be levied or collected in respect of management, maintenance or repair of roads during the period on and from the 16th day of June, 2005 to 26th day of July, 2009 (both days includes). In other words, for the period prior to 27.07.2009 and for the period post 16.06.2005, no service tax can be levied and collected for the services provided in relation to management, maintenance or repair of roads. It is also made clear that Notification No.24/2009-ST dated 27.07.2009 exempts from service tax the services covered under the category of 'management, maintenance or repair of roads' w.e.f. 27.07.2009. Therefore, the amount collected for the services concerning as road cutting charges by the appellant will not attract any service tax for the period invoked in both the appeal cases filed by the appellant.

5.1 For the remaining two components i.e. Development charges and street light charges collected on account of these services by the appellant there cannot be any exemption and service tax is to be levied under the head of management, maintenance or repair service. The appellant during the hearing argued that on some of the elements of Development charges, they paid the service tax by including the same under lease rent. Therefore, a verification exercise is required to be done and no service tax on such amounts, where they have already paid service tax, can be levied again from them.

6. For quantifying the service tax in case of development charges and street light charges to be collected under the service of management, maintenance and repair services, the case is remanded to the Original Authority, who will decide the matter afresh after carrying out a proper verification in respect of the said components, where tax purported to have been paid taking the same as part of lease rent and after giving personal hearing to the appellant. Further, following the CESTAT decision in the case of ***Chattisgarh State Industrial Development Corporation Ltd. VS. CCE, Raipur,*** 2016-TIOL-2119 – CESTAT – DEL., the service tax demand for the components of development charges and street light charges is confirmed but only for the period of one year; the demand for extended period (beyond one year) is dropped and there will not be any penalty leviable against the assessee - appellant.

7. In the result, both the appeals are allowed by way of remand in above terms.

[Dictated and pronounced in the open Court)

(ASHOK K. ARYA)
MEMBER (TECHNICAL)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Anita