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

COURT NO. I

DATE OF HEARING : 18/04/2017.
DATE OF DECISION : 24/04/2017.

Service Tax Appeal No. 51803 of 2014

[Arising out of the Order-in-Original No. COMMISSIONER/RPR/ST/120/2013 dated 19/12/2013 passed by The Commissioner of Central Excise & Customs, Raipur (Chhattisgarh).]

M/s Chhattisgarh State Power Distribution Co. Ltd. Appellant

Versus

CCE & ST, Raipur Respondent

Appearance

Ms. Sakshi, C.A. – for the appellant.

Ms. Neha Garg, Authorized Representative (DR) – for the Respondent.

CORAM : **Hon'ble Shri Justice Dr. Satish Chandra, President**
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No. 53022/2017 Dated : 24/04/2017

Per. B. Ravichandran :-

The appeal is against order dated 19/12/2013 of Commissioner of Central Excise, Raipur. The appellant is engaged in the distribution of electricity generated by Chhattisgarh State Electricity Generation Company, to various consumers. They were registered with the Service Tax Department for the purpose of discharging service tax. Certain enquiries were conducted by the officers of DGCEI Regional Unit, Raipur in July, 2010. On completion of the enquiry, proceedings were initiated against the appellant by show cause notice dated 24/12/2012, to demand and recover and amount of Rs. 2,27,40,246/- towards their service tax liability for the period 2006-2007 to July, 2012 under the category of consulting engineering service. The said amount was said to have been representing the service tax collected by the appellant from their consumers and, as such, the demand was made under Section 73A (3) readwith Section 73 (2) of Finance Act, 1994. An amount of Rs. 2,00,67,509/- already paid by the appellant is sought to be appropriated against the said demand. The appellants contested the demand stating that they have deposited all the amount collected towards service tax and they have reconciled the records regarding the collection and payment of service tax. The Original Authority adjudicated the case and confirmed service tax liability of Rs. 2,27,40,246/- representing the service tax collected by the appellant from their customers. He appropriated an amount of Rs. 60,72,252/- already paid by the appellant towards the said demand. He also imposed a penalty of Rs. 10,000/- under Section 77 (2) of the Finance Act, 1994.

2. The learned Counsel for the appellant submitted that it is clear that the demand in the present case has been confirmed only on the basis that the appellant has not paid the amount collected as service tax on supervision charges under the accounting code "consulting engineering service". The same has

wrongly been paid by the appellant under the accounting code of "technical inspection and certification agency service". The learned Counsel also submitted that payment of service tax is nowhere disputed. Payment under wrong accounting code is the only matter of present appeal. The same is only a procedural lapse and when service tax has been fully discharged, there cannot be further confirmation of the same tax, only on the ground that the same has been paid under different head of account. The learned Counsel relied on the following decisions in support of her contention :-

(a) **Diamond Cements vs. CCE, Bhopal** dated 16/11/2016 cited as **2017 – TIOL – 1264 – CESTAT – DEL.** ;

(b) **Devang Paper Mills Pvt. Ltd. vs. Union of India** dated 30/11/2015 cited as **2016 (41) S.T.R. 418 (Guj.)** ;

(c) **Arcadia Share & Stock Brokers Pvt. Ltd. vs. CCE & C, Goa** dated 13/06/2013 cited as **2013 (7) TMI 330 – CESTAT Mumbai** ; and

(d) **Pepsico India Holding Pvt. Ltd. vs. CE, Allahabad** dated 15/04/2010 cited as **2010 (20) S.T.R. 552 (Tri. – Del.)**.

3. The learned AR reiterated the findings recorded in the impugned order. She further submitted that the appellants were engaged in providing various taxable services. The service tax paid under technical inspection and certification agency service cannot be adjusted towards liability under the category of

consulting engineer service. It is not categorically established by the appellant that the tax paid under technical inspection and certification agency service is not liable to be paid as there was no service rendered under that heading.

4. We have heard both the sides and perused the appeal record. We note that Original Authority observed that the appellants paid service tax under the cover of 98 challans during the material period. He held that, only 21 challans for payment of service tax of total amount of Rs. 60,72,252/-, are in respect of consulting engineer service. The total amount of Rs. 2,85,51,533/- as claimed to have been paid by the appellant is not paid under the said tax entry. We note that the Original Authority should have examined the claim of the appellant regarding full discharge of service tax liability, comprehensively with reference to the appellants total tax liability, during the material period. Instead, the Original Authority has restricted his examination on purely technical aspect of head of account, figuring in the challan and came to the conclusion that payment of service tax of Rs. 60,72,252/- only, will be accounted for under consulting engineer service. The appellants on the other hand claimed that they have discharged their full service tax liability during the material time. However, there was payment under wrong category of head of account. We find that the claim of the appellant requires detailed examination. For this, the total liability for service tax of the appellant during the material time can be ascertained and tax already paid (irrespective of head of

account) during the material time, attributable to the said services can be reconciled. In other words, it is clear that if the full tax liability has been discharged, payment under a wrong account head will not make the appellant liable to pay the service tax again. In this connection, we find support in the case laws relied upon by the appellant mentioned earlier in this order. With this observation, we set aside the impugned order and remand the matter back to the Original Authority for detailed scrutiny of the total service tax liability of the appellant vis-à-vis the total payment of service tax during the material time. The appeal is allowed by way of remand.

(Order pronounced in the open court on 24/04/2017.)

(Justice Dr. Satish Chandra)
President

(B. Ravichandran)
Member (Technical)

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