IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing/Decision:07.04.2017

Service Tax Appeal No.53058/2014

[Arising out of Order-in-Original No.27-31/AKM/CST/ADJ2014 dated 28.02.2014 passed by the Commissioner (Adj.), Service Tax Commissionerate, New Delhi]

M/s.United Electricals and Mechanical Works Appellant

Vs.

CST, Delhi Respondent

Appearance:

Rep. by Shri A.K. Batra, CA & Ms. Sakshi, Advocate for the appellant.
Rep. by Shri Ranjan Khanna, DR for the respondent.

Coram: Hon'ble Shri S.K. Mohanty, Member (Judicial)
Hon'ble Shri B. Ravichandran, Member (Technical)

Final order No.52863/2017

Per B. Ravichandran:

The appeal is against order dated 28.02.2014 of the Commissioner (Adj.), Service Tax, New Delhi. The appellants are engaged in providing management, maintenance and repair services and are liable to service tax under the terms of Section 65(105)(zzg) read with Section 65(64) of the Finance Act, 1994.

2. The dispute in the present appeal is with reference to the value taken for discharging the service tax liability. The appellants have discharged service tax on 20% value of the contract. The contract stipulated that the value of the materials to be supplied as 80% and the service portion will be 20%. The appellants discharged VAT on supply of the goods and discharged service tax on rendering of service. The Revenue entertained a view that the valuation has been made improperly by the appellant and in terms of the notification no.12/2003-ST, they have not

properly taken the actual service value to pay service tax. The proceedings initiated against the appellant, by way of issue of various show cause notices concluded in the impugned order. The Original Authority confirmed service tax liability of Rs.1,09,43,926/- along with interest under Section 65 and penalties under Section 76, 77 and 78 of the Finance Act, 1994.

3. Ld. Consultant for the appellant submitted that the issue involved in the present appeal has been subject matter of earlier decisions by the Tribunal, involving similar set of facts. He referred to three such decisions to support his submissions:-

(1) **Gogia Brothers Vs. CST, Delhi dated 14.12.2016 cited as 2017(1) TMI 163-CESTAT-New Delhi.**

(2) **CST, Delhi Vs.National Pump Service dt.12.01.2017 cited as 2017 (3) TMI 176 – CESTAT, New Delhi.**

(3) **CST, Delhi Vs.Raj Engineering dated 02.11.2016 cited as 2016-TIOL-3359-CESTAT-DEL.**

4. Ld.AR submitted that the work order allocates 80% towards goods and 20% towards service. The impugned order is correct to hold that such is the artificial split up of consideration is to avoid due discharge of service tax by availing notification no.12/2003, improperly. The appellant should have supported the abatement under notification by a clear supporting evidence for actual value of materials supplied.

5. We have heard both the sides and perused the appeal records.

6. We note that the identical set of facts in respect of other contractors, who entered into a contract with the same client (Delhi Jal Board, CPWD, etc.), have

been subject matter of decision by the Tribunal in the above referred decisions by the ld. Consultant. In the case of **Gogia Brothers (supra),** the Tribunal observed as under:-

> "5. The only dispute in the present appeal is relating to value adopted by the appellant for discharging service tax liability. Admittedly, the work orders mentioned the bifurcation of value for supply of materials as well as rendering of service to the proportion of 80% -20%. Admittedly further, there is supply of materials in these contracts. In such situation, without further examining the actual quantity of supply of materials, it is not correct on the part of the Original Authority to confirm the tax liability on the whole of the consideration ignoring the terms of the work order. In other words, the whole work order has been considered as service contract only and subjected to levy to the full. We find such assertion is factually untenable. No examination of quantum of materials supplied has been made. The appellant's claim based on the written contract, as agreed upon by the recipient of services, has been rejected without valid grounds. We further find that the appellants submitted that the supply of materials in terms of the work order always exceeds 80% to the total value. It was further asserted that this can be established from their accounts and the bills raised to the recipient of service.
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> 6. We note that the similar set of work orders were the subject matter of other original adjudications under the same jurisdiction, wherein the department dropped the demand proceedings in respect of M/s. National Pump Services and M/s. Raj Engineering Co. The said findings were not accepted in the impugned order on the ground that the appeals have been filed by the Revenue against the original orders. We find that one such order had reached the Tribunal. The Tribunal vide Final Order No.54773/2016 dated 2.11.2016 upheld the findings of the lower authority regarding the correctness of discharge of service tax liability by the appellant. We note that almost similar set

of facts were the subject matter of discussion. In the said order, Tribunal observed that the denial of material portion was on bland allegation without any documentary evidence. If the Revenue has alleged artificial bifurcation, it is for them to substantiate the allegations by producing sufficient documentary evidence. We note that in the present case, on similar set of contracts, there are separate set of invoices with payment of VAT on sale of goods. As such, there is no justification for inclusion of such transaction value for levy of service tax. Accordingly, we find that the impugned order cannot be sustained."

7. We also note that the appellants pleaded that there is no monetary gain for them in artificially loading more value to materials supplied by paying VAT, as the rate of VAT is higher than the service tax, payable on the service portion. We have perused a few work orders, which clearly stipulated that 80% of the value shown to have suffered VAT with reference to supply of materials. Considering the ratio followed in the decided cases cited above, in identical set of facts, we find that the impugned order is not sustainable. Accordingly, the same is set aside. The appeal is allowed.

[Order dictated & pronounced in open court]

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

Ckp.