IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

BENCH-DB

COURT –III

Service Tax Appeal No.ST/55559/2013 - ST [DB]

[Arising out of Order-in-Appeal No.13/Commr./ST/STN/2012 dated 19/11/2012 passed by the Commissioner (Appeals), Central Excise, Bhopal]

Sanjay Singh Associates …Appellant

Vs.

C.C.E. & S.T., Bhopal … Respondent

Present for the Appellant : Mr.Prashant Shukla, Advocate
Present for the Respondent: Mr.Sanjay Jain, D.R.

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

Date of Hearing/Decision: 20/04/2017

FINAL ORDER NO. 53096/2017

PER: B.RAVICHANDRAN

The appeal is against Order dated 19.11.2012 of Commissioner of Central Excise, Bhopal. The appellants are engaged in providing various taxable services to M/s. Diamond Cement in terms of contracts entered into with the client. The dispute in the present appeal relates to the liability of the appellant to pay serviced tax under the category of site formation and clearance, excavation and earth moving and demolition service in terms of Section 65 (97a) and Section 65 (105) zzzy of the Finance Act, 1994. The proceedings against the appellant resulted in the impugned order, which confirmed service tax liability of Rs.65,95,000/- against the appellant alongwith penalties under Section 77 & 78 of the Finance Act, 1994.

2. The ld. Counsel for the appellant submitted that the Original authority has fallen in error in appreciating the facts relating to the work carried out by the appellant in terms of the contract with M/s.Diamond Cement. He drew our attention to para 8 of the impugned order, which stated that in terms of the agreements the appellant has to perform work of excavation, removal of ordinary soil and hard rocks and loading it into dumpers and dumping it at a designated location. Having recorded such nature of activity, the original authority concluded the tax liability of the appellant. The ld. Counsel submitted that they have 2 sets of contracts with M/s. Diamond Cement. One relates to loading and transportation of useful limestone from screening plant in the mines to the crushing place of the client, using the dumper trucks. There were many activities involved in loading, transportation and unloading of limestone to the designated place from the mines. In pursuance of second set of contracts, they were to provide various equipments like excavator, bulldozers, water tankers and allied machineries, on hire basis to M/s. Diamond Cements, who will use them for removal of over-burden. The

ld. Counsel narrated from the terms of agreement, copies of which were submitted alongwith the appeal. He contended that the nature of work is only (a) transportation and (b) hiring of equipments to the client. It cannot be called the service of site formation excavation etc. Even if the equipments are given with operating and maintenance staff, he submitted that the same cannot be called as excavation activity. He relied on the decision of the Tribunal in Global Vectra Helicorp Ltd. vs. C.S.T. – 2016 (42) S.T.R. 118 (Tri.).

3. The ld. A.R. supported the findings of the Original Authority. He submitted that it is not a simple contract for only supply of various machinery or equipments. The appellants are engaged in proper functioning of the equipments to the intended purpose namely, removal of soft/hard overburden in the mining area. He further relied on rate schedule mentioned in the agreement which is fixed for cubic meter of overburden removed. It is the submission of the ld. A.R. that this is indicative of the scope of contract. It is basically with reference to excavation and not hiring of equipments, simplicitor.

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

5. The dispute is regarding categorization of activity of the appellant for service tax liability. We note that the appellants entered into 2 types of contracts with the client, M/s. Diamond

Cements. We have also perused sample copies of such agreements. Agreement dated 26.10.2006 shows the scope of work as below:-

> ***1. Scope of Work:***
>
> *Loading and transporting 300000 M.T. of usable limestone per year from the screening plant at our Satpara Mines to the crusher/stockpile at our works at Narsingarh (approx. distance 23 K.M. one side), using your dump-trucks.*
>
> *The principal activities contemplated under the above scope are specifically, but not limited to, the following:*
>
> *a. Loading into dump-trucks and transportation of screened, usable limestone from the screening plant at Satpara to the crusher/stockpile at our Narsimgarh works:*

The transportation charges are fixed per Metric Ton of limestone. Fuel shall be issued per M.T. by the client.

6. Agreement dated 31.10.2007 is for hiring of equipments, the scope of work, as mentioned in the said agreement, is as below:-

> ***1. "Scope of work & Quantities:***
>
> *Providing equipment, such as excavators, bulldozers, drilling machines, dump trucks water tanker and allied machinery, in adequate numbers on hire as to enable us to remove overburden – soft and hard.*

The principal activities contemplated under the above scope for which your equipment will be used specifically, but not limited to, the following:

a. *Soft Over Burden Removal – Excavation and removal of ordinary soil, loading it into dumpers/dump trucks and dumping it at a designated location, upto 1.5 K.M. farther from the location of excavation, and dozing the same at the dumping yard, spraying water on the haulage roads, etc. – 162500 Cu. Mtr. Approx.*

b. *Hard Over Burden Removal – Drilling, excavation and removal of hard rock, loading it into dumpers and dumping it at a designated location, upto 1.5 K.M. Rarther from the location of excavation and dozing the same at the dumping yard, spraying water on the haulage roads, etc. – 87500 Cu. Mtr. Approx.*

c. *Drilling of 41/2" dia, approx. 8 metre deep, holes on hard, rocky strata (limestone/hard reject faces) including secondary drilling upto 3% of the total meterage drilled – 12500 Metre approx. However, the depth may vary from hole to hole, depending upon our requirement.*

In case any broken machinery part or tool is trapped inside a hole, the same will be searched out and removed by you.. if any work is done by us to carry this out, the cost thereof will be debited to your account and recovered from your payment."

7. On careful perusal of the terms of agreement, we find that the appellants are not directly involved in activity of site clearance, excavation, earth moving etc. The first contract is basically for transportation, which also involved loading unloading. The second contract is for hiring out the various

special equipments/ machineries to be used by the client in the mining activity. We note that the rates fixed for hiring of such equipments, based on cubic meter of overburden removed, by itself will not indicate that the appellants are involved in removal of overburden. The scope of work merely mentions that the appellant has to provide equipment such as excavators, bulldozers etc. to enable M/s. Diamond Cement to remove overburden. The various other clauses of the agreement with reference to idling charges, removal of machinery all indicates the nature of contract. We find that the observation of the Original Authority to the effect that in terms of agreement the appellants are to perform work of excavation is not supported by the documentary evidence as perused in various agreements submitted by the appellant.

8. In view of the above discussion and analysis, we find no merits in the impugned order and accordingly, set aside the same. The appeal is allowed.

[Dictated and pronounced in the open Court]

(B. RAVICHANDRAN)	**(S.K. MOHANTY)**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

Anita