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

Date of Hearing/Decision:01.05.2017

Service Tax Appeal No.632/2011 (DB)

[Arising out of Order-in-Appeal No.12(DKV)ST/JPR-I/2011 dated 19.01.2011 passed by the Commissioner (Appeals), Central Excise, Jaipur]

Banna Ram Choudhary Appellants

Vs.

CCE, Jaipur Respondent

Appearance:
Rep. by Shri Vijiyan Khongal, CS for the appellant.
Rep. by Shri Sanjay Jain, DR for the respondent.

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

Final Order No.53149/2017

Per B. Ravichandran:

The appeal is against order dated 19.01.2011 of Commissioner of Central Excise (Appeals), Jaipur. The appellants are engaged in construction activities. The dispute in the present appeal relates to their tax liability under "Construction of commercial or industrial complex" services covered by Section 65(25b) and Section 65(105)(wzq) of Finance Act, 1994. The proceedings initiated against the appellant concluded by issue of original order dated 16.03.2010. Service tax liability of Rs.15,55,898/- was confirmed against the appellant along with penalties under Section 76 and 77 of Finance Act, 1994. On appeal, the said order was upheld by the impugned order.

2. Ld. Counsel appearing for the appellant submitted that the buildings they have constructed are all for use of educational institutions, who are running courses

recognized by the competent authorities. Since these are buildings for educational institutions, they cannot be called as commercial buildings and the construction is not leviable to tax. He submitted certain details regarding service recipient and their institutes. He also submitted that they have constructed certain individual houses for occupation, which cannot be taxed under "commercial construction service". However, no supporting evidence could be submitted by the appellant.

3. Ld. AR supported the findings of the impugned order. He submitted that the appellants did not provide categorical evidence regarding nature of various buildings constructed by them now subjected to service tax levy. Regarding individual buildings claimed to be residence, he submitted that the same could not be established with supporting evidence.

4. We have heard both the sides and perused the appeal records. We have perused the submissions submitted by the appellants also.

5. We note that the appellants claimed that the substantial part of the demand relates to construction of building for colleges. These are institutions approved by the competent authority like AICTE and are affiliated to recognized universities. We note that for liability under "commercial or industrial construction service", the buildings constructed should be primarily used for "commerce or industry". Buildings used for educational purpose by recognized educational institutions cannot be categorized as "commercial buildings". The quantum of fee collected or the owner of the building being a 'commercial person', will not have effect on the categorization of the building. The lower authorities gave emphasis to purported commercial nature of the owner of the building. This, in our view, is not relevant. The use of the building will decide the tax liability.

6. Regarding individual residence claimed to have been used for occupation by the persons, we find no categorical supporting evidences have been submitted by the appellant. No detailed examination has also been made by the lower authorities However, the appellants claimed that these are residence for individuals. The appellants submitted that they can furnish supporting evidence to establish nature of building like approval by local authorities, etc.

7. In view of the above discussion, we find that the impugned order, as it stands, cannot be sustained. Accordingly, we set aside the same and remand the matter for fresh decision by the Original Authority. The appellants shall be given opportunity to submit all supporting evidences before a decision is taken. The appeal is allowed by way of remand.

[Order dictated & pronounced in open court]

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

Ckp.