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

Date of Hearing:18.04.2017
Date of Decision: 16.05.2017

Service Tax Appeal No.861/2011 -DB

[Arising out of Order-in-Original No.16/2011 (Service Tax) Commissioner dated 18.03.2011 passed by the Commissioner of Central Excise Commissionerate (Jaipur-I), Jaipur]

M/s. Shree Balaji Builders — Appellants

Vs.

CCE, Jaipur — Respondent

Appearance:
Rep. by Ms. Rinki Arora, Advocate for the appellant.
Rep. by Shri Sanjay Jain, DR for the respondent.

Coram: Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. B. Ravichandran, Member (Technical)

Fi nal Order No.53295/2017

Per B. Ravichandran:

The appeal is against order dated 18/21.03.2011 of Commissioner of Central Excise-I, Jaipur. The appellants are engaged in various activities like construction/repair of roads and various civil structures. The dispute in the present appeal relates to the tax liability of the appellant under the category of "Management, Maintenance or Repair Services" in terms of Section 65(64) and "Commercial or Industrial Construction Services" in terms of Section 65(25b) of the Finance Act, 1994. The Original Authority confirmed service tax liability of Rs.62,34,683/- against the appellant and imposed penalties of equivalent amount under Section 78 with further penalties under Section 76 and 77 of the Finance Act, 1994.

2. We have heard both the sides presented by Ms. Rinki Arora, ld. Advocate for the appellant and Shri Sanjay Jain, ld. DR for the respondent/Revenue. We

have also perused the appeal records. We notice that the dispute in the present appeal relates to various contracts listed in the show cause notice dated 11.09.2009. Paras-6 , 7 and 8 of the show cause notice list out various work orders and the service tax liability of the appellant against each. A total of 40 work orders were listed for tax liability. However, the impugned order gave a summary finding that having gone through various work orders, it was found that the work orders relating to patch repair of roads/widening and strengthening of roads are to be taxed under "Management, Maintenance or Repair Service". Similarly, it was held that construction of civil structures are to be taxed under "Commercial or Industrial Construction Services". In the appeal before us, the appellant strongly pleaded that some of the contracts executed by them with reference to roads are actually for widening of roads from 4 lanes to 6 lanes. As such, in terms of Board's Circular dated 23.02.2009, such activities should be considered as construction of roads. The appellant also provided detailed work sheet to correlate individual items of services.

4. We also note that the Finance Act, 2012 inserted Section 97(1) to give exemption from service tax in respect of management, maintenance or repair of roads during the period 16.06.2005 to 26.07.2009. Notification no.24/2009 –ST dated 27.07.2009 was issued for exempting the said services from service tax from that date onwards. As such, there is no service tax liability on management, maintenance or repair of roads from 16.06.2005. The period involved in the present appeal is April, 2005 to September, 2008. Hence, wherever tax liability is confirmed under management, maintenance or repair of roads, the same shall not be sustainable.

5. The appellant also contested the tax liability with reference to various civil construction activities like construction of park, RCC tanks, etc. for non-commercial purposes. The list of work given in Table-2 & 3 of the show cause notice has not been examined by the adjudicating authority in detail, to arrive at the correct decision.

5. We also note that the appellant submitted that, during the period of dispute, though the show cause notice mentioned the taxable receipt as Rs.5,31,19,157/- , the actual receipt is only Rs.2,74,53,113/- . The service tax, if any, is liable to be paid only on actual receipt of consideration as per the law prevalent during the material period.

6. We find that the various factual issues discussed above have not been examined by the Original Authority. The applicability of the retrospective exemption in respect of management, maintenance or repair of roads also requires examination. As such, we find that the impugned order, as it stands, cannot be sustained. Accordingly, the same is set aside. The matter is remanded back to the Original Authority for a fresh consideration of all the issues based on the observations made hereinabove. The appellants shall be given adequate opportunity to present their side of the case. The appeal is allowed by way of remand.

[Order pronounced on 16.05.2017.]

(Justice Dr. Satish Chandra)
President

(B. Ravichandran)
Member (Technical)

Ckp.