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

Date of Hearing/Decision:06.12.2016

Service Tax Appeals No.1786 and 1801/2011-DB

(Arising out of Order-in-Appeal No.523-524(CB)ST/JPR-II/2011 dated 24.10.2011 passed by the Commissioner of Central Excise (Appeals), Central Excise, Jaipur)

M/s.Tirupati Fibres Industries Ltd. Appellants

Vs.

CCE, Jaipur-II Respondent

Appearance:
Rep. by Ms. Priyanka Goel, 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.56448-56449/2016

Per S.K. Mohanty:

The issue involved in both the appeals are identical and thus, the same are taken for hearing together and a common order is being assed. The brief facts of the case are that during the disputed period, the appellants had received income from "renting of immovable property" services for providing land/structure, plant and machinery and office equipments to M/s.Marudhar Yarn Pvt. Ltd. on lease rent basis. Since the appellant did not pay the service tax attributable to providing taxable service, the department proceeded against the appellant and confirmed the service tax duty liability along with interest and also imposed penalty under various sections of the Finance Act, 1994. On appeal, the adjudication order was upheld by the ld. Commissioner (Appeals) vide the impugned order dated 27.09.2011. Hence, the present appeals before the Tribunal.

2. Ld. Advocate appearing for the appellant submits that the agreement entered into between the appellant and M/s. Marudhar Yarn Pvt. Ltd. is not for renting of the property but also to provide the employment to the emloyees of the appellant, who closed down operations and are under the BIFR. Thus, the appellant submits that since the contract is a composite contract and the same is not exclusively meant for renting of the property alone, service tax cannot be levied on the services provided by the appellant.

3. Ld.AR appearing for the Revenue, on the other hand, submits that as per the terms of the contract, the compensation is given as consideration given by the lessee is very clear, wherein it has been provided that the lessor shall pay an amount of Rs. 2 Lakhs as a compensation for allowing to use the land/structure, plant and machinery and office equipments. Thus, ld. AR submits that since the amount of compensation received by the appellant is towards providing the land/structure, plant & machinery, etc. on rental basis, the same conforms to the taxable service under the heading " renting of the immovable property" on which the service tax is required to be paid by the appellant in terms of Section 65(82) of the Finance Act, 1994.

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

5. We find that the ld. Commissioner (Appeals) vide the impugned order has recorded a detailed finding with regard to the services provided and leviability of the service tax on such services. The relevant portion of the said order is extracted below:-

> "From above there is little doubt that property in question which is a factory and which has been rented out, along with its office plant and machinery, for commercial purposes are squarely covered under the definition of 'renting of immovable property' as has been defined under Section 65(90a) of the Act. Secondly, the appellant contended that since the factory was leased out along with its complete infrastructure i.e. office building plant and machinery, including labour of the factory therefore this leasing or renting was beyond the purview of this definition. In this regard, I observe that condition of labour incorporated into the agreement due Labour Law according to which no labour can be removed from a factory but for the Labour Act. Furthermore the cost of labour is not subject matter of the lease agreement but the immovable property including tangible goods installed therein has only been rented out, and there is no denial of this fact that the amount of rent has been received towards the renting or leasing out immovable property."

6. We have also perused the contract and found that the ld. Commissioner (Appeals) has taken note of the contents in the contract and thereafter, arrived at the conclusion that the services provided as per the contract fall under the taxable category of "renting of immovable property" , on which service tax is leviable. Thus, so far as the merits of the case are concerned, we do not find any infirmity in the impugned order passed by the ld. Commissioner (Appeals). However, considering the peculiar facts and circumstances of the case and in view of the fact that there were divergent views with regard to the leviability of the service tax on renting of immovable property, we are of the view that the benefit of Section 80

ibid can be extended in this case for non-imposition of penalty under Sections 76, 77 and 78 of the Finance Act.

7. Therefore, the impugned order is set aside to the extent of imposition of penalty alone and the penalty is set aside. In the result, the appeal is partly allowed.

[order dictated and pronounced in open court]

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

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