CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-IV

Date of hearing: 12.06.2017

Appeal No. ST/55320/2013-CU[DB]

[Arising out of the Order-in-Original No. 193/ST/D-II/2012 dated 16.12.2012, passed by the Commissioner of Central Excise, New Delhi]

M/s. Ial India Ltd. … Appellant

Vs.

CST Delhi … Respondent

Appearance:

Present Shri Derrick Sam, Advocate for the appellant
Present Shri Sanjay Jain, DR for the respondent

Coram: **Hon'ble Mr. D.N. Panda, Member (Judicial)**
Hon'ble Mr. Ashok K. Arya, Member (Technical)

FINAL ORDER No.54035/2017

Per D.N. Panda:

Appellant explains that there were three proposals in the show cause notices to raise the demand in question. The show cause notice proposed in para 2.3 thereof that certain amounts is received in terms of para 4.2 such as delivery order fee, bill of lading fee, direct line income have been sought to be taxed by the authority to raise a demand of Rs.729,618/-. These are not taxable receipts for no taxable service mentioned under the taxing entry "Business Auxiliary Services" under section 65 (zzb) read with section 65 (19) of the Finance Act 1994. Such receipts have no nexus or any way related to taxability.

2. Ld. DR says that above services being intimately connected with the provision of taxable services to the principal, those are liable to service tax as has been held by the adjudicating authority.

3. Record reveals that neither the show cause notice expresses examination of any contract between the parties nor the adjudicating authority made any effort to call for respective document and examine the character of the receipt and to determine the taxability of the services covered therein under the appropriate taxing entry. In absence of such detailed examination of the appropriate document and nothing is before us to take a view as to the taxability, on the above aspects of taxation, the matter shall go back to the adjudicating authority to call for the work orders or the contract entered into between the parties and examine the terms there of to ascertain whether the receipts in question in any were indispensable or inextricably connected to the provision of services recognized by law as taxable. Only upon such examination ld. Authorities shall ascertain taxability. We make it clear that there shall not be any arbitrary adjudication as has been done by the impugned order.

4. Ld. Counsel submits that the second count of demand to the extent to Rs.5,75,604/- was on the basis of para 6 to the show cause notice. There was error in taxing in respect of space booking.

5. This particular allegation is also not supported by any material on record and also suffers from similar infirmities as stated in the preceding paragraphs. Therefore, the demand on

this count is also remanded to the adjudicating authority for re-examination with the direction made as herein before.

5. The third account of demand of Rs.7,26,629/- arises on the basis of allegation in para 7.3 of the adjudication order. Appellant says that when para 7 is read it shows that the profit received by the appellant from its head office has been sought to be taxed. Ld. DR denies the same on the ground that there was no such attempt made in the adjudication to tax the profit but services provided by the appellant on behalf of its head office has been taxed.

6. Record reveals that such taxability has also suffered from infirmity as stated at the outset. Therefore, on this account also the matter should go to the ld. Adjudicating authority to examine threadbare the nature of receipt and the reasons why such receipt was made following the direction made herein before.

7. When we find that neither the authority below have made any examination on the basis of evidence against the allegation in the show cause notice reasonable opportunity of hearing is required to be granted to the appellant to defend before ld. Adjudicating authority who shall call for respective documents for his examination if required, issuing a questionnaire for the purpose of compliance.

8. Ld. Counsel at this stage says that the demand is time barred and also certain amount of taxes has been paid. We are conscious that double taxation is not intention of the levy. Ld. Advocate shall plead such grounds before ld. Authority. If the

adjudication is time barred, ld. Authority shall consider the same appropriately and record his reasons.

9. Appellant is directed to make the application to the adjudicating authority by 31.07.2017 for fixation of a date of hearing and on such date, without seeking adjournment the appellant shall submit its defense in writing following the guidelines as stated above for the scrutiny of the authority and hearing of the matter. Ld. Authority is expected to pass the order within three months of his last date of hearing.

10. In the result, appeal is remanded for re-adjudication with the time frame stated above following the guidelines affording reasonable opportunity of hearing to the appellant. Ld. Authority shall record the pleadings and evidence of appellant and shall pass a reasoned and speaking order on all the aforesaid aspects.

[Dictated and Pronounced in the open court]

(Ashok K. Arya)
Member (Technical)

(D.N. Panda)
Member (Judicial)

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