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/902/2012 [DB]

[Arising out of Order-in-Original No.90/BPL/2012 dated 25.04.2012 passed by the Commissioner (Appeals), Customs & Central Excise, Bhopal]

M/s.Shramik Kalyan Samiti …Appellant

Vs.

C.C.E., Bhopal … Respondent

Present for the Appellant : Mr.Sumit Khabya, C.A.
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 : 31.03.2017
Date of Pronouncement: 07/07/2017

FINAL ORDER NO. 54776/2017

PER: S.K. MOHANTY

This appeal is directed against the impugned order dated 25-04-2012 passed by the Commissioner (Appeals), Customs & Central Excise, Bhopal.

2. Brief facts of the case are that an intelligence was gathered by the Department that the appellant as a provider of "Man Power Recruitment or Supply Agency Service" had provided such service to Bhopal Sahakari Dugth Sangh Maryadit during the period May 2006 to April, 2007, but did not pay Service Tax attributable to such taxable service. Upon issuance of show cause notice, the matter was adjudicated vide order dated 27.02.2012, in confirming demand of Service Tax of Rs.9,96,534/- alongwith interest against the appellant. Besides, penalties were imposed under Section 77 & 78 of the Finance Act, 1994 on the appellant. On appeal, the ld. Commissioner (Appeals) vide the impugned order has dropped the Service Tax Demand for the period prior to 01.05.2006 and confirmed Rs.5,59,738/- for the services provided during the period 01.06.2006 to April, 2007. Further, the penalties were reduced in accordance with the Service Tax liability confirmed therein.

3. The ld. Consultant appearing for the appellant submitted that the appellant is a non-governmental organisation, working as charitable society and not as any commercial concern. He further submitted that the recipient of service i.e. Bhopal Sahakari Dugth Sangh Maryadit cannot be considered as client of the appellant, in order to fall under the purview taxable

service defined under Section 65 (68) read with Section 65 (105) (k) of the Finance Act, 1994. He also submitted that the show cause proceedings are barred by the limitation of time, for the reason that there is no suppression, mis-statement etc. on the part of the appellant to defraud the Government Revenue. Thus, he submitted that the proceeding having been initiated beyond the normal period, the same is not maintainable for confirmation of the adjudged demand.

4. On the other hand, the ld. D.R. appearing for the respondent reiterated the findings recorded in the impugned order.

5. Heard both sides and perused the records.

6. The term "client" has been defined in the Chambers English Dictionary to mean "a person who employs a professional advisor or a person using the services of the professional person". In the present case, it is a fact on record that the appellant had supplied the man power to its client namely, Bhopal Sahakari Dugth Sangh Maryadit under monitory consideration. Since the said recipient of service had engaged the services of the appellant for providing the man power for accomplishing its business purpose, such recipent should be termed as "client" for the purpose of the definition

under "Man Power Recruitment or Supply Agency Service". Further, we find that the appellant provided such service to others namely, M/s.B.H.E.L. and the Service Tax on such services were collected and deposited by the appellant into the Government Account. Thus, the appellant cannot decide its tax liability differently in respect of the same services provided to different recipient of service.

7. With regard to the limitation aspect raised by the appellant, we find that the appellant was duly registered with the Service Tax Department for providing such service and in fact, paid the service tax in respect of the services provided to M/s. B.H.E.L. and also reflected the particulars in the ST-3 Returns. . Further, we find that the agreement entered into between the appellant and its client provided that consideration towards the service includes service tax liability and burden of the same lies with the appellant. The service recipient in the disputed case had also confirmed the fact that the amount paid to the appellant was inclusive of Service Tax. Hence, it cannot be said that the appellant had not suppressed the material facts from the Department in disclosing the particulars regarding the services provided to Bhopal Sahakari Dugth Sangh Maryadit. Thus, the extended period invoked in this case for confirmation of the adjudged demand is in conformity with the statutory provisions.

8. In view of the above discussion and analysis, we do not find any infirmity in the impugned order passed by the ld. Commissioner (Appeals). Accordingly, the appeal filed by the appellant is dismissed.

[Pronounced in the open Court on 07/07/2017]

(B. RAVICHANDRAN)
MEMBER (TECHNICAL)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Anita