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

Date of Hearing/Decision:02.08.2017

Service Tax Appeals Nos.1729/2011 and 244/2012 (DB)

[Arising out of Order-in-Appeal No.19(ST)/RPR-II/2011 dated 12.08.2011 in Appeal No.ST/1729/2011 and Order-in-Appeal No.24(ST)/RPR-II/2011 dated 08.12.2011 in Appeal No.ST/244/2012, passed by the Commissioner (Appeals-II), Central Excise, Raipur]

CCE, Raipur Appellants

Vs.

M/s.Indian Coffee House Worker's Cooperative Society Ltd. Respondent

Appearance:

Rep. by Shri Sanjay Jain, DR for the appellant.
Rep. by none for the respondent.

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

Final Order Nos.55713-55714/2017

Per B. Ravichandran:

These two appeals by Revenue are against orders of the Commissioner (Appeals-II),Raipur. The Respondent are engaged, in terms of agreement with NMDC, to provide food and other items to the employees in the premises provided by the clients. The Revenue entertained a view that the activities of the respondent will be taxable under the category of "Outdoor Catering Service" in terms of Section 65(76a) of Finance Act, 1994 read with Section 65(24). Accordingly, proceedings were initiated against the respondent, which resulted in confirmation of service tax demand of Rs.21,51,118/- by the Original Authority, who also imposed equal amount of penalty under Section 78 and further penalty of Rs.1000 under Section 77. The respondent as well as Revenue filed appeal against the said order. The respondent contested the tax liability. The Revenue contested the non-imposition of penalty under Section 76. The Commissioner (Appeals) decided both the appeals by issuing the impugned orders. He held that the respondent is not liable to tax as "Outdoor Caterer" and set aside the impugned order. The Revenue preferred present appeals against the said orders.

2. Ld. AR elaborating the grounds of appeal submitted that the respondent is engaged in providing catering services in the canteen set-up in the premises of NMDC in terms of the agreement with the clients. The activities undertaken by the respondent squarely falls under the taxable category. The findings of the Commissioner (Appeals) to the effect that the respondent is not, in any way, engaged in supply of food items as they are only selling the food items at a subsidized rate fixed by the client, is completely mis-placed and not relevant to the issue at hand. The activities, as explained by the impugned order itself, will show that the respondents are clearly covered by the tax entry. Regarding imposition of penalties both under Section 76 and 78 and also regarding demand for extended period, ld. AR submitted that there is no ground for bonafide belief and also during the material time, imposition of penalties under both the sections are legally sustainable as held by the Hon'ble Delhi High Court in case of **Bajaj Travels Ltd. – 2012 (25) STR 417 (Delhi).**

3. None appeared on behalf of the respondent, in spite of notice.

4. We note that the case was listed on many occasions and on most of the time, none appeared for the respondent in spite of notice. As per records, the case was listed on 27.10.2016, 23.11.2016, 12.01.2017, 03.03.2017 and 25.04.2017 and

finally on 9.6.2017. On 9.6.2017, the Bench observed that the case was being adjourned, as a last chance, to 2.8.2017. Notice was duly issued. As more than adequate opportunities have been provided to the respondent, we are proceeding to decide the case based on the case records and the submissions made by the ld. DR.

5. On perusal of the impugned order dated 12.08.2011, we note that the Commissioner (Appeals) in para 5.3. held that the respondent is not, in any way, engaged in supply of food items as they are selling the food items at a subsidized rate fixed by M/s.NMDC. We are not able to understand the distinction attempted by the Commissioner (Appeals). The terms of the agreement, as explained in the impugned order itself, shows that the work carried out by the respondent is squarely covered by the statutory scope of “Outdoor Catering Service” in terms of Section 65(76a) read with Section 65(24) of the Finance Act, 1994. We also note that in respect of the respondent themselves, the matter was earlier decided in similar set of facts. The Hon’ble Allahabad High Court in case of **Indian Coffee Workers’ Co-op. Society Ltd. – 2014 (34) STR 546 (Allahabad),** examining the appeal filed by the respondent against confirmation of service tax demand held that the respondent are liable to pay service tax as an outdoor caterer. However, the Hon’ble Allahabad High Court set aside the penalty under Section 78.

6. Following the ratio of the Hon’ble Allahabad High Court in respondent’s own case, in similar set of facts, we hold that the respondent are liable to pay service tax as “Outdoor Caterer” during the material period. However, considering the facts and circumstances of the case, we find that there are reasonable causes for non-payment of service tax during the material time. Accordingly, it is fit case for invoking Section 80 for non-imposition of penalties under Section 76 and 78.

While upholding the tax liability, we hold that no penalty shall be leviable on the respondent. In view of the above findings, the appeals of the Revenue are disposed of accordingly.

[order dictated and pronounced in the open court]

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

Ckp.