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

Date of Hearing/Decision:18.08.2017

Service Tax Appeal No.53307/2014

[Arising out of Order-in-Original No.JAI-EXCUS-001-COM-146-13-14 dated 27.03.2014 passed by the Commissioner of Central Excise, Jaipur(I)]

M/s.North Star Engineering Service (P) Ltd. Appellants

Vs.

CCE, Jaipur Respondent

Appearance:

Rep. by Shri Narendra Singhvi, Advocate for the appellant.
Rep. by Ms. Neha Garg, DR for the respondent.

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

Final Order No.56208/2017

Per B. Ravichandran:

The appeal is against order-in-original dated 27.03.2014 of Commissioner of Central Excise, Jaipur-I. The appellants are engaged in providing taxable service under the category of "Erection, Commissioning or Installation Services". They have entered into in agreement with M/s. Sistema Shyam Teleservices Ltd. The contracts are for sale of tower materials and for erection work of tower. The dispute in the present case is relating to eligibility of the appellant to pay service tax under abated value in terms of Notification no.1/06-ST dated 1.3.2006 in respect of second contract. The Revenue sought to deny concession as claimed by the appellant on the ground that the gross value on the full taxable service has not been considered by the appellant while arriving at the abatement. It was contended that cement, steel, etc. supplied during the course of erection should also form part of gross value. The Original Authority, after examining the defence given by the appellant, held that insofar as in first agreement, the appellants were rightly eligible for exemption under notification no.12/2003-ST dated 20.06.2003 as materials are supplied on sale basis to the clients. However, in respect of second agreement, which dealt with erection work, the Original Authority held that abatement under Notification No.1/2006-ST shall not be available as the appellants did not include the value of plant and machinery and equipments to arrive at the gross value.

2. There is one more issue in this appeal relating to denial of cenvat credit on the ground that provider of input service did not mention PAN based registration number, which makes the document as ineligible to support the credit. The Original Authority upheld the denial of credit on this ground.

3. Ld. Counsel for the appellant submitted that while the Original Authority gave a categorical finding regarding the availability of notification no.12/2003-ST with reference to their first contract, he did not give a specific and clear finding with regard to application of the said notification to the second contract dated 30.04.2009. The ld. Counsel also submitted that with reference to this order, the appellant did supply goods, mainly steel items, on sale basis to the clients and accordingly, submitted detailed break-up figures. They claimed the benefit of notification no.12/2003-ST in respect of second contract also. Though, the appellant discharged service tax liability taking into consideration the abatement available in terms of notification no.01/2006-ST, the ld. Counsel submitted that their eligibility to notification no.12/2003-ST has to be considered based on the

facts and if the same is considered, the abatement under notification no.1/2006-ST will not be valid. The tax liability has to be re-worked, after extending the benefit of notification no.12/2003-ST.

4. Regarding the dispute on the eligibility of the cenvat credit due to irregular documents, the ld. Counsel submitted that provider of service has given invoice, which has clearly shown the service tax registration number along with PAN number. So, the service tax has been duly discharged by the appellant based on the invoices received and accordingly, the credit has been taken. Further, reliance was placed on the following cases laws:-

(1)Commissioner Vs.Samsung India Electronics P. Ltd.
2017(52) STR 497 (Tribunal-All) affirmed by Hon'ble Allahabad High Court at 2017(52) STR J253 (Allahabad)

(2)Commissioner Vs. HCL Technologies Ltd.
2016(46)STR 751 (Tribunal-Delhi)

(3) Computer Sciences Corporation India Pvt. Ltd.
2015-TIOL-2123-CESTAT-DELHI

5. Ld. AR supported the findings of the lower authorities. She submitted that the Original Authority found that the appellant is not eligible for abatement under Notification no.1/2006 as there was no supply of plant & machinery and equipments in the execution of the second work order. As such, the Original Authority correctly concluded that the gross value should suffer tax without any abatement. Regarding cenvat credit availed on documents not having PAN based registration, Ld. AR submitted that the correctness of such documents otherwise, requires verification.

6. Heard both the sides and considered the appeal records.

7. On the first issue regarding the valuation of service as per second contract executed by the appellant, we note that there is no finding by the Original Authority on the eligibility of the appellant for exemption under Notification no.12/2003-ST. It is clear that the appellants did make a claim for such exemption before the Original Authority. Further, the finding of the Original Authority that the abatement under Notification no.1/2006-ST is not available for the second contract, as the contract does not include the value of plant & machinery and equipment, is not resolving the issue before him. Admittedly, the appellants did supply materials in the execution of the contract. The notification states that the gross amount charged from the customers shall include plant & machinery and equipments, parts and any other materials sold by the service provider during the course of providing of service. However, as already pleaded by the appellant herein, the appellant is now claiming exemption under notification no.12/2003-ST only, which allows exemption of value of materials during the course of provision of service. It is the claim of the appellant that they have all documentary evidence in support of their claim that such sale has in fact been done by them in pursuance of the second contract. We find there is no finding by the Original Authority on this aspect. The appellant are aggrieved. Accordingly, we direct the Original Authority to re-examine the issue for a clear finding on the eligibility of the appellant for the benefit under notification no.12/2003-ST. Regarding the second issue, we have perused the invoices on which the credit taken by the appellant is being disputed. Registration number is not based on the PAN number though PAN is also indicated in the same invoice. Though the appellants only pleaded that the

eligibility of the credit cannot be denied on this ground as the fact of payment of service tax is not in dispute, we find this aspect also can be verified by the Original Authority. The fact of discharge of service tax by the appellant should be verified for invoking discretion under Rule 9 based on evidences submitted by the appellant.

8. With the above discussions and analysis, we set aside the impugned order and remand the matter to the Original Authority for a fresh decision. The appellant shall be given adequate opportunity to present their side of the case before a decision is taken.

[order dictated and pronounced in the open court]

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

Ckp.