CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R.K.Puram, New Delhi

COURT-II

Date of hearing/decision: 18.08.2017

Appeal No.ST/52522/2016-[SM]

[Arising out of the Order in Original No. 39/ADC/ST-Bhi-I/2015 dated 30/03/2015 passed by the Additional Commissioner, Central Excise, Bilaspur.)

Bhilai Jaypee Grinding Plant (BJGP) … Appellant

Vs.

CCE, Raipur … Respondent

Appearance:
Present Shri Narender Rughvi, Advocate for the appellant
Present Shri K. Ubhav Sengraj, AR for the respondent

Coram: Hon'ble Mr.Ashok K. Arya, (Technical Member)

FINAL ORDER No. 56404/2017

Per Ashok K. Arya :

1. M/s BJGP is in appeal against Order-in-Original number 39/2015 dated 30.03.3015 whereunder inter alia Service Tax of Rs. 22,47,130 along with interest and equivalent penalty has been sustained.

2. The brief facts are that :

i. During the audit of the assessee appellant it was noticed that there was foreign exchange outgo against the services received from foreign based consultancy firm for services like consultancy during the financial years 2009-10, 2010-11.

ii. Therefore, the assessee appellant was issued show cause notice dated 24/06/2014 demanding service tax of Rs. 22,47,130 along with interest and for imposition of penalties.

iii. The show cause notice was adjudicated by the Original Adjudicating Authority namely Additional Commissioner who sustained the show cause notice confirming demand of the duty interest and imposition of penalties.

iv. The Appellant went in appeal before Commissioner (Appeals), who sustained the order of Original Adjudicating Authority.

v. Therefore, the appellant is in appeal before the Tribunal.

3. Both the sides have been heard.

4. After having carefully considered the facts of the case and the submissions of both the sides, it appears that during the subject period there were interpretational issues in respect of levy of service tax on the subject services. The Central Board of Excise and Customs also issued Instruction F.No. 276/CX8A dated 26/09/2011 on the subject of 'Applicability of Service Tax on taxable services tax provided by a non-resident etc. to a recipient in India', where citing certain judgments of the Hon'ble Supreme Court, it was clarified that service tax liability on any taxable service provided by non-resident of a person located outside India, to a recipient in India would arise w.e.f. 18/04/2006 i.e. date of enactment of Section 66A of the

Finance Act, 1994. Thus the position was not very clear and the matter has been a subject matter of interpretation and litigation. When it is so and when the appellant has already paid the tax along with interest, following the decisions of the Hon'ble Supreme Court in *Hindustan Steel Ltd. V/s State of Orissa* 1978 (2) ELT (J159) SC and of Hon'ble Punjab & Haryana High Court in *CCE V/s Jai Ganesh Processors* 2016 (343) ELT 47 (P&H), levy of penalties against the assessee appellant is not justified. Consequently, the impugned order in respect of imposing penalties on the assessee appellant is set aside.

5. In the result, the impugned order is modified to above effect and the appeal is allowed in above terms.

[Order dictated and pronounced in the open court]

(Ashok K. Arya)
Member (Technical)

Rekha