(In the Customs, Excise & Service Tax Appellate Tribunal
West Block No.2, R.K. Puram, New Delhi-110066)
Appeal No.ST/56879/2013-ST(SM)
(Arising out of Order-in-Appeal No.08(RDN)/ST/JPR-II/2013 dated 18.01.2013 passed by Commissioner (Appeals),CE-II, Jaipur)

M/s Gandhar Rock Tech …Appellant
Vs
CCE & ST Jaipur-II …Respondent

Appearance:
Present for the Appellant : Ms Rinki Arora, Advocate
Present for the Respondent : Shri U.Sengraj, DR

Coram:
HON'BLE MR SK MOHANTY, MEMBER (JUDICIAL)

Date of hearing: 11.09.2017
Date of decision: 06.10.2017

Final Order No.56965/2017

Per S.K. Mohanty,

This appeal is directed against the impugned order dated 18.01.2013 passed by the Commissioner, Central Excise, Jaipur.

2. Brief facts of the case are that during the period 31.05.2006 to 28.08.2009, the appellant had provided the taxable service namely, "Site formation & Clearance & Excavation and earthmoving services" to M/s Royal Constructions, Gannon Dunkerly & Co. Ltd. and Swastik Construction as a sub-contractor. However, the appellant did not pay service tax into the Central Government account, on the ground that the service tax liability on such taxable service was discharged by the main contractor. The department initiated proceedings against the appellant and confirmed the service tax demand on the ground that it is

liable to pay service tax on the services provided by it, in the capacity of sub-contractor.

3. The ld. Advocate appearing for the appellant submits that the main contractor had discharged the service tax liability on the total amount billed by the appellant and the certificates reflecting payment of service tax in respect of work done by the sub-contractor were also produced before the lower authorities. However, she submits that those certificates have not been considered and the service tax demand was confirmed against the appellant. To support her stand that since the main contractor had discharged the service tax liability on the total amount, the sub-contractor cannot be subjected to levy of tax again, the ld. Advocate has relied on the decision of the Tribunal in the case of M/s Power Mech Projects Ltd, 2017(48) STR 165 (Tri.-Hyd), Visesh Engg. Co., 2016 (43) STR 232 (Tri.-Hyd.) Urvi Construction, 2010(17) STR 302 (Tri.-Ahmd.), Nana Lal Suthar, 2015-TIOL-2357-CESTAT-DEL.

4. On the other hand, the ld DR appearing for the Revenue submits that the appellant as the sub-contractor is liable to pay service tax on the taxable services provided by it. In this context, he has relied on the decision of the Tribunal in the case of M/s Max Tech Oil & Gas Services Pvt Ltd, 2017 (52) STR 508 (Tri.Del.).

5. Heard both the sides and perused the records.

6. I find that the submissions of the appellant that the main contractor had discharged the service tax liability on the taxable services provided by the

appellant has not been specifically addressed by the authorities below. The issue regarding liability for payment of service tax for rendering of the taxable service by the sub-contractor has been discussed by the authorities below. So far as such findings are concerned, I am of the view that the authorities below are correct in interpreting the statutory provision that the service provider alone is liable to pay service tax. However, considering the fact that the services provided by the sub-contractor, the appellant herein, had suffered tax in the hands of the main contractor, any further demand made on the appellant will amount to double taxation. Thus, considering the submissions of the appellant that documentary evidences were produced before the original authority to demonstrate that service tax liability in respect of the disputed service had already been discharged by the main contractor, I am of the view that the matter should go back to the original authority for verification of the fact of payment of service tax in respect of the services rendered by the appellant. If the original authority is satisfied that the service tax amount has been paid by the main contractor, then no demand can be confirmed against the appellant.

7. In view of above, after setting aside the impugned order, I remand the matter to the original authority for deciding the issue afresh, in line with the above observations. Needless to say that opportunity of personal hearing should be granted to the appellant, before deciding the matter afresh.

(Pronounced in the court on 06.10.2017)

(S.K.Mohanty)
Member (Judicial)

pcs