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

Date of Hearing: 13.10.2017
Date of Decision: 31.10.2017

Service Tax Appeal No.1853/2011-CU(DB)

[Arising out of Order-in-Original No.175/BPL/2011 dated 26.08.2011 passed by the Commissioner (Appeals), Customs , Central Excise & Service Tax, Bhopal (M.P.)]

M/s.Avtar & Company — Appellant

Vs.

CCE, Bhopal — Respondent

Appearance:
Rep. by Shri Manish Saharan, Advocate for the appellant.
Rep. by Shri Ranjan Khanna, DR for the respondent.

Coram: Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. B. Ravichandran, Member (Technical)

Final Order No.

Per B.Ravichandran:

The appeal is against order dated 26.08.2011 of Commissioner (Appeals), Bhopal. The appellants are engaged in loading unloading of wagons for M/s.Western Coalfields Ltd. It appeared that the activities of the appellants are liable to service tax under the category of "Cargo Handling Services" in terms of Section 65 (105) (zr) of Finance Act, 1994.

2. Proceedings were initiated against the appellant to demand and recover service tax amounting to Rs.9,66,670/- for the period 8.8.2003 to 13.10.2006. Show cause notice dated 16.09.2008 was issued, which was adjudicated by the Original Authority vide order dated 18.01.2011. He confirmed the tax liability and

also imposed penalty of equivalent amount under Section 76, 77 and 78 of the Finance Act, 1994. The said order was confirmed by the impugned order.

3. Ld. Counsel appearing for the appellant contested the demand against the appellant, both on merit as well as on limitation. He submitted that in terms of the contract, they were engaged to provide on hire basis tippers, dozers, drills for drilling, dozing, excavation and transporting all types of materials in the mining area. They were to provide on hire basis pay loaders to load coal into the wagons and tippers for loading and transporting coal from the mines to the railway sidings. The contract entered into with M/s.WCL is for providing a range of services and there are separate rates for loading and transportation. These services cannot be taxed under "Cargo Handling Services". Further, it is submitted that M/s.WCL were discharging service tax liability treating the services as Goods Transport Agency Service, on reverse charge basis. The ld. Counsel relied on the various decisions of the Tribunal in support of his contention regarding non-liability to service tax.

4. The demand is also contested on limitation. The show cause notice dated 16.09.2008 was issued to demand and recover service tax for the period 8.8.2003 to 13.10.2006 invoking extended period of limitation. During the period, the tax liability on these types of activities were not clear. In fact, the client (M/s.WCL) along with other similar Coal Companies had correspondence with the Service Tax Authorities to get the matter clarified. The Board did clarify in 2007 on certain aspects of the tax liability. There were conflicting decisions also by the Tribunal and the jurisdictional authorities regarding tax liability and classification of these

activities. In any case, the service tax liability has been discharged by the client under GTA service and there can be no case for extended period of demand.

5. Ld. AR reiterated the findings of the lower authorities.

6. We have heard both the sides and perused the appeal records.

7. We consider the question of limitation first. Admittedly, the show cause was issued invoking extended period. The notice alleges that the appellant did not get themselves registered with the Department and nor they paid service tax. They have not followed the procedure laid down for payment of service tax. On these basis, the demand for extended period was invoked. We find that the notice did not elaborate with supporting evidence, any sustainable reasons for invoking demand for non-payment of service tax due to reasons of fraud, mis-statement, suppression on the part of the appellant. Admittedly, the issue under consideration regarding the tax liability of such activities has been as contentious one with various correspondences and clarifications issued by the concerned authorities. The Tribunal also in similar cases held that the demand cannot be invoked for extended period in the present set of facts. We refer to the following decisions of the Tribunal in this regard:-

(1) **Jai Jawan Coal Carriers Pvt. Ltd. -2015 (37) STR 509 (T-Delhi)**

(2) Niranjan Lal Agarwal - 2012 (26) STR 457 (Tribunal-Delhi)

(3) Gajanand Agarwal - 2009 (13) STR 138 (Tri-Kolkata)

(4) Singh Brothers - 2009 (14) STR 552 (Tribunal-Delhi)

8. On perusal of these decision and the facts of the present case, we are of the considered opinion that there is no sustainable ground for a demand with extended period. Accordingly, the impugned order confirming the service tax liability is set aside on the question of limitation. Since the demand is set aside on the limitation, we are not examining further any merits of the case. Accordingly, the appeal is allowed.

[Order pronounced on 31.10.2017.]

(Justice Dr. Satish Chandra)
President

(B. Ravichandran)
Member (Technical)

Ckp.