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

Date of Hearing/Decision:22.11.2017

Service Tax Appeal No.850/2012 (DB)

[Arising out of Order-in-Original No.21/2012/ST/JPR-II dated 29.03.2012 passed by the Commissioner, Central Excise Commissionerate (Jaipur-II), Jaipur]

M/s. Prahlad Rai & Company — Appellant

Vs.

CCE, Jaipur — Respondent

Appearance:
Rep. by Shri B.L. Narsimhan, Advocate for the appellant.
Rep. by Shri Ranjan Khanna, DR for the respondent.

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

Final Order No. 58201/2017

Per B. Ravichandran:

The appeal is against order dated 29.03.2012 of Commissioner of Central Excise Commissionerate, Jaipur. The appellants were rendering service to M/s.HCCL in terms of various contracts. The dispute in the present appeal relates to the period March, 2006 to June, 2009 with reference to service tax liability of the appellant for such activities carried out for M/s. HCCL. After scrutiny of the documents and calling for certain details from the appellants, Revenue initiated proceedings against them to demand and recover service tax payable on such activities. The case was adjudicated resulting in the impugned order. The Original Authority held that the appellants are liable to pay service tax of Rs.1,53,26.147/- under two categories of services. For the period prior to 1.6.2007, the activities undertaken by the appellant for their clients was considered for tax liability under "site formation services". For the period post 1.6.2007, the same activity was taxed under "mining services". Penalties under Section 76, 77 and 78 are also imposed on the appellant.

2. Ld. Counsel appearing for the appellant submitted that they have entered into various contracts with HCCL. All the contracts were erroneously considered together as contracts relating to "mining activities". There were four contracts, three of them are not at all connected to excavation or mining. At the outset, he objected to the finding of the Original Authority without giving separate reasons for different contracts. All the three contracts, which were not considered were with reference to cement transportation work, machinery hire work and road cutting work , which are different, independent contracts though with the same client.

3. Regarding the main demand, which arose with reference to contract dated 9.1.2006 with HCCL, it is submitted that the contract is composite and the scope of work starts from mobilization of equipments and man power, removing of top vegetation, over burden, drilling, blasting, excavating boulders, sorting and sizing of boulders including secondary blasting/breaking, crushing and further transportation. Ultimately, the required size of the boulders and of required quantity per month are to be supplied to the client. Drawing our attention to the terms of the contract, ld. Counsel submitted that this contract is essentially for production or processing of goods for or on behalf of the client. He submitted that the whole scope of work is to produce and supply the required size boulders for

road construction by the client. The quarry operation undertaken by the appellant is towards this end only. As such, it is the claim of the appellant that these services cannot be taxed either under site formation or under mining. He referred to the various decided cases to support his contention.

4. The demand also contested on limitation. He submitted that the department has been provided with all information including copies of the contract on 21.08.2008 itself and the present notice has been issued on 20.4.2011. He submitted that there could be no suppression or willful mis-statement from the date they made all particulars available to the Department i.e. on 21.08.2008. He relied on the decision of the Hon’ble Supreme Court in the case of **Modipon Fibre Company – 2007 (218) ELT 8 (SC).** Thus, it is the contention of the appellant that the whole demand should be held to be barred by limitation.

5. Ld. AR for the Revenue contested the appeal. He submitted that the terms of the contracts are very clear that the work involves both site formation by way of clearing over overburden, vegetation.etc. Thereafter, there is a process of mining of mineral in the form of boulders. As such, he justified the demand under both the categories of taxable services. Further, regarding limitation, he supported the findings of the Original Authority stating that the details were taken on analyzed by the Revenue, not disclosed by the appellant on their own.

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

7. Admittedly, the appellants entered into different contracts with the client, HCCL. The present order only dealt with a main contract dated 9.1.2006. No findings were recorded with reference to other three contracts, which are having no

connection with the activities covered by the said contract of 9.1.2006. We have examined the agreement dated 9.1.2006. The scope of work mentioned covers providing all equipment, manpower, tools and tackles as stated under Clause 8 of this LOI. Admittedly, the appellants have processed excavated boulders to required size for use by the clients. The contract indicates that it is part of the Rajasthan Road Project Package RJ-7. Hence, we find considerable force in the submissions made by the appellant regarding the scope of work. We note that for period prior to 1.6.2007, the Original Authority confirmed the tax liability under site formation service. This finding is not tenable in view of the various decisions of this Tribunal. A reference can be made to:-

(1) **Aravali Construction Company Pvt. Ltd. – 2016-TIOL-2488-CESTAT-DELHI**
(2) **Sadbav Engineering Ltd. – 2016 (43) STR 288 (Tribunal- Ahmd.)**
(3) **Associated Soapstone Distributing Co. Pvt. Ltd.-2014(34) STR 865.**
(4) **Commissioner Vs. Vijay Leasing Company – 2011 (22) STR 553 (T-Bang.)**
(5) **M.Ramakrishna Reddy V. Commissioner - 2009 (13) STR 661 (T-Bang.)**
(6) **Aravali Construction Company ltd. – 2017-TIOL-896-CESAT-DEL.**
(7) **Teknomin Construction Ltd. – 2017-TIOL-1758-CESAT-DELHI.**

8. We note that by now, it is well settled position that such type of contracts were there is an extraction or raising of ore or mineral, the same cannot be considered as site formation service. In the present case, there is an excavation or extraction of boulders for further process.

9. Regarding tax liability post 1.6.2007 under category of "mining service", we note that the appellants did undertake the process of excavating the boulders. However, substantially, there are further process involved on such excavation to make fit for client. These responsibilities are mandated upon the appellants in terms of the contract. The specification of the type of boulders to be supplied along with quantity is also mentioned in the agreement. The product produced for process by the appellant by way of required size of boulders is intended for road project. It is clear that such process cannot be called mining activities, simplicitor. As argued by the appellant, the essence of the contract is to supply the required quantity of the specified size bounders to the client as per required quantity per day. As such, we hold that these are more properly covered under the tax entry "Business Auxiliary Service". No demand has been made under such category. In this connection, we also record that the reliance placed by the appellant on the decision of the Tribunal in **Ujjawal Parivahan Sahakari Samiti Ltd. – 2015 (39) STR 222 (Tribunal-Delhi)** and the decision of the Hon'ble Supreme Court in **Chrestain Mica Industries Ltd. – 1961 (12) STC 150** are applicable to the dispute in hand.

10. We also note that the reliance placed by the Original Authority on the decision of the Hon'ble Supreme Court in **Arihant Marbles & Minerals Pvt. Ltd. - 2009 (12) LCX 0001** is not appropriate or relevant. The Hon'ble Supreme Court relied on the decision in case of **Aman Marbles Industries Pvt. Ltd. - 2003 (157) ELT 0393 (SC).** The case was with reference to the scope of the term "manufacture". The Honb'ble Supreme Court held that extraction of stones or further cutting of marble boulders into marble slab will not amount to

manufacture whereas in the present case, we are not dealing with the scope of the term ”manufacture”. The appellants are only pleading that they are producing, processing goods for or on behalf of their clients. The scope of the term “manufacture” has no direct relevance to the issue at hand.

11. In view of the above discussions and analysis, we find that the impugned order is not sustainable on merit. Accordingly, the same is set aside. The appeal is allowed with consequential relief.

[order dictated and pronounced in the open court]

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

Ckp.