IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. IV

DATE OF HEARING : 14/12/2017.
DATE OF DECISION : 14/12/2017.

Service Tax Appeal No. 60499 of 2013

[Arising out of the Order-in-Appeal No. 202/ST/DLH/2013 dated 30/08/2013 passed by The Commissioner of Central Excise (Appeals), Delhi – I, New Delhi.]

M/s Deltax Enterprises Appellant

Versus

CCE, Delhi – I Respondent

Appearance

Shri A.K. Batra, Consultant – for the appellant.

Shri Ranjan Khanna, Authorized Representative (DR) – for the Respondent.

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

Final Order No. 58418/2017 Dated : 14/12/2017

Per. B. Ravichandran :-

The appeal is against order dated 30/08/2013 of Commissioner (Appeals), Delhi – I. The appellants are engaged in construction activities and providing management, maintenance service. They are registered with the Department and are discharging service tax. On verification of the Income tax returns of the appellant for the years April 2006-2007 to 2010-2011 the Revenue entertained a view that the appellants are not discharging service tax on full taxable consideration received by them. It appeared that they are not paying service tax on some portion of the consideration which is admittedly shown as income in their tax returns. Accordingly, proceedings were initiated against the demand and recover service tax amount of Rs. 18,79,635/-. The case was adjudicated. The Original Authority dropped the demand for the period beyond 5 years and also allowed deduction due to sale of goods by the appellant. He confirmed a total demand of Rs. 16,14,334/-. On appeal, the Commissioner (Appeals) further reduced the demand amount by allowing the claim of the appellant with reference to repair and renovation service of non-commercial Government buildings and service with reference to gardening and horticulture activities. He confirmed tax liability of Rs. 11,37,155/-.

2. The learned Consultant appearing on behalf of the appellant submitted that out of the above confirmed tax amount they are not contesting an amount of Rs. 71,271/- which was confirmed on the ground that certain taxable considerations for providing service as evidenced from TDS Certificate of Income Tax have not suffered service tax and an amount of Rs. 39,084/- as there is no record to defend their case. Thus, these two amounts are not contested. However, the learned Consultant submitted that service tax demand of Rs. 10,26,800/- attributable to the taxable income of Rs. 90,09,321/- is not

sustainable. This taxable value has been arrived at by the lower authorities in terms of best judgment under Section 72 of Finance Act, 1994. The main basis of arriving at this figure is Income Tax returns filed under Section 44AD of Income Tax Act, 1961. The said provision provides for declaring income on a lump-sum presumptive basis where the assessee did not maintain detailed accounts. The learned Consultant submitted that such return cannot form basis for confirming service tax liability. The service tax liability should be attributed to identifiable taxable service provided to another person. The inflated income shown in the income tax return, for other commercial purposes, cannot form basis for confirming service tax demand. In order to substantiate that this income is not an actual income the appellant filed affidavit to the effect that they have rendered service only to the Government Department and they have furnished all the contracts and supporting documents with support of these contracts. These were examined and accordingly the tax demands were reduced by the lower authorities. They have no other income which can be attributed to any taxable service.

3. The learned AR supported the findings of the lower authorities and submitted that in the absence of detailed accounts maintained by the appellant the provision of Section 72 were rightly invoked by the lower authorities. It is for the appellant to establish that the income shown by them to the income tax authorities is not actually received and that they are not liable to service tax.

4. Admittedly, the appellant did not maintain detailed accounts for all the transactions undertaken by them. They have availed the provision of Section 44 AD of Income Tax Act for filing returns. This formed basis for service tax demand as the income shown is much higher than the declared consideration for taxable service. We note that the appellants categorically asserted that they did not provide any other service other than those, the details of which have been submitted to the lower authorities. The Revenue also could not point out excess receipt on these contracts or the taxable service which gave them the consideration escaping the tax. In the absence of specific allegation with reference to the nature of service or the service recipient it is not tenable to hold an income of the appellant even if it is admitted to be an actual income, as consideration for a taxable service. The minimum requirement to tax an assessee for service tax is to identify the nature of their taxable service alongwith the recipient of such service. In the present case all identified contracts for the identified service recipients have been examined and concluded by the lower authority. No service tax liability can be fastened on unidentified service for unidentified service recipient. There is no provision for such summary assumption even under Section 72 of the Finance Act, 1994. Admittedly, the said section provides for arriving at the taxable value to be based of the Assessing Officer’s best judgment in case where the appellant fails to furnish return under Section 70 or fails to assess the tax in accordance with Finance Act, 1994. In

the present case the appellants did file returns under Section 70 and also made available all the contracts on which service tax liability will arise for them. As such, we find application of Section 72 cannot be extended based solely on the income tax return without identifying the specific taxable service or service recipient.

5. In view of the above discussion and analysis, the service tax demand made based on reasons recorded by the lower authorities is found to be unsustainable. Accordingly, the impugned order is set aside. The appeal is allowed.

(Order dictated and pronounced in open court.)

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

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