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

Date of Hearing/Decision:30.10.2017

Service Tax Appeal No.55685/2013-EX(DB)

[Arising out of Order-in-Appeal No.221/S.Tax/D-II/2012 dated 15.11.2012 passed by the Commissioner of Central Excise (Appeals), New Delhi]

M/s.JPS Associates Pvt. Ltd. Appellant

Vs.

CCE, Delhi-III Respondent

Appearance:
Rep. by Shri Narender Singh , Advocate for the appellant.
Rep. by Shri Sanjay Jain, AR for the respondent.

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

Final Order No.58615/2017

Per S.K. Mohanty:

This appeal is directed against the impugned order dated 15.11.2012 passed by the Commissioner (Appeals), Service Tax, New Delhi. The brief facts of the case are that during the disputed period, the appellants had provided certain services to various organizations on behalf of the main consultants, with whom the appellant had entered into the agreement for providing such service. During the course of verification of the records, it was observed by Anti Evasion Branch of Commissionerate that the appellant had provided Management Consultancy services but did not pay the service tax on account of providing such service. Accordingly, show cause proceedings were initiated against the appellant, which culminated into adjudication order dated 27.04.2012, wherein service tax demand of Rs.26,78,407/- was confirmed against the appellant and penalties were imposed under Section 77 and 78 of the Finance Act, 1994. On appeal, the ld.

Commissioner (Appeals) has upheld the adjudged demand confirmed by the Original Authority.

2. Ld. Advocate appearing for the appellant submits that as per the agreement entered into between it and various main consultants, the assigned tasks were to provide service to various organizations located wihin the country. Thus, he submits that since on behalf of the main consultant the appellant had provided service to third parties, the service so provided should fall under the category of "Business Auxiliary Service" and cannot taxed under "Management Consultancy Service". Thus, he submits that the adjudged demand confirmed againt the appellant is not sustainable on the ground of wrong classification of the service.

3. On the other hand, ld. DR appearing for the Revenue reiterated the findings recorded in the impugned order and further submits that since the appellant has provided the service to its main consultants, the services had to be classified under "Management Consultancy Service" and should be taxed under that category of service. Further, he referred to the agreement entered into between the main consultants and PADECO Co. Ltd. and the appellant stated that the services were provided to the service recipient and there is no involvement of any main consultant in providing such service.

4. Heard both the sides and perused the case records.

5. The question involved in this appeal for consideration by the Tribunal is whether the services provided by the appellant should be classifiable under "Management Consultancy Service" or "Business Auxiliary Service. For convenience of reference, both the categories of taxable services as defined under Finance Act, 1994 are extracted hereinbelow:-

"Business Auxiliary Service" means any service in relation to –

(i) Promotion or marketing or sale of goods produced or provided by or belonging to the client; or

(ii) Promotion or marketing of service provided by the client; or "

(iii) Any customer care service provided on behalf of the client; or

(iv) Procurement of goods or services, which are inputs for the client; or

[Explanation- For the removal of doubts, it is hereby declared that for the purposes of this sub-clause, "inputs" means all goods or services intended for use by the client;]

(v) Production or processing of goods for, or on behalf of, the client;]

(vi) Provision of service on behalf of the client; or

(vii) A service incidental or auxiliary to any activity specified in sub-clauses (i) to (vi), such as billing, issue or collection or recovery of cheques, payments, maintenance of accounts and remittance, inventory management, evaluation or development of prospective customer or vendor, public relation services, management or supervision.

And includes services as a commission agent, but does not include any information technology service and any activity that amounts to "manufacture" within the meaning of clause (f) of section 2 of the Central Excise Act, 1944 (1 of 1944).

"Management or business consultant' means any person who is engaged in providing any service, either directly or indirectly, in connection with the management of any organization or business in any manner and includes any person who renders any advice, consultancy or technical assistance, in relation to financial management, human resources management, marketing management, production management, logistics management, procurement and management of information technology resources or other similar areas of management;"

6. On perusal of the above, it transpires that in case of Management or Business Consultant, there must be two persons in the contract, one is the service provider and the other is the service recipient. On the contrary, in the case of “Business Auxiliary Service”, the said service involves more than two persons in order to perform such service. In the case in hand, the appellant claimed that it had provided services to the main consultants to the parties situated within the country or outside (mostly Government Organizations). The Department has also not countered the submission of the appellant that it had not provided the services to the third parties on behalf of its main consultants rather the Original Authority while at page 9, after reproducing the definition of “Business Auxiliary Service”, has categorically held that the parties are providing consultancy to the main consultants. Thus, it is evident that the appellant has provided this service to the third parties on behalf of the main consultants. Accordingly, the services provided, according to our view, be classifiable under “Business Auxiliary Service”. Therefore, we do not find any merit in the impugned order in classifying the services under “Management Constancy Service” or “Business Auxiliary Service”. Accordingly, the impugned order is set aside and the appeal is allowed in favour of the appellant.

[order dictated and pronounced in open court]

(S.K. Mohanty)
Member(Judicial)

(B. Ravichandran)
Member (Technical)

Ckp.