CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi, Court No. 1

Date of hearing/decision: 21.12.2017

S. T. Appeal No. 56765 of 2013 with C.O. No. 58258 of 2013
(Arising out of order in appeal No. 82(RDN) ST/JPR-II/2013 dated 11.02.2013 passed by the Commissioner (Appeals), Central Excise, Jaipur-II).

CCE, Uaipur Appellant

Vs.

M/s Bordia & Associates Respondent

Appearance:

Sh. Sanjay Jain, AR for the Revenue
Sh. Kumar Vikram, Advocate for the Respondent-assessee

Coram:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. V. Padmanabhan, Member (Technical)

Final Order No. 58746/2017

Per: **V. Padmanabhan**:

The present appeal has been filed by the Revenue against the Order-in-Appeal No. 82(RDN)ST/JPR-II/2013 dated 11.02.2013 passed by the Commissioner (Appeals), Central Excise, Jaipur-II. The appellant has also filed the cross objection.

2. The respondent-assessee is engaged in providing of "Commercial or Industrial Construction" and pay service tax on 33% of the gross amount charged by availing exemption Notification No. 1/2006-ST dated 01.03.2006. The department, by issuing show cause notice, proposed to deny the benefit of abatement at 67% claimed by the respondent-assessee in respect of certain services rendered to Hindustan Zinc Limited. The activities involved in this

contract were construction of boundary wall, chain fencing, renovation, repair and maintenance, construction of swimming pool, canteen furnishing, painting etc. The department was of the view that such services were in the nature of completing and finishing services and not original works and hence will not be entitled to the benefit of Notification No. 1/2006-ST. Both the authorities below have extended the benefit of such notification. Hence, the present appeal by the Revenue.

3. With the above background, we heard Sh. Sanjay Jain, ld. AR for the revenue and Sh. Kumar Vikram, ld. Advocate for the respondent-assessee.

4. Sh. Sanjay Jain, ld. AR submitted that the services rendered by the appellant for Hindustan Zinc Limited cannot be considered as original work since they are in the nature of completion and finishing services which are post completion services and hence, cannot be given the benefit of Notification No. 1/2006. Ld. Advocate for the assessee justified the impugned order and referred the circular dated 22.05.2007 issued by CBEC which clarifies the issue in favour of the respondent-assessee and which has been referred to and accepted by the authorities below.

5. We have heard both sides and perused the record. We note that various activities carried out for Hindustan Zinc Limited involve construction of canteen. The authority below has recorded the finding that such activities cannot be treated as completion or finishing services but part of a composite contract. Accordingly, the view has been taken in the impugned order that such services cannot be considered as only completion of finishing services but the services rendered by the assessee are to be considered as "Commercial or Industries Construction service".

6. We have perused the CBEC Circular dated 22.5.2007 which states that the view has to be taken on the basis of facts and circumstances of each case. In the facts and circumstances of the present case, we are convinced that the services can be considered as composite work and various activities cannot be considered as only finishing services. Consequently, we find no reason to interfere with the finding of the Commissioner (Appeals) in the impugned order.

7. The other issue which is agitated by the Revenue is regarding setting aside of the service tax demand of Rs. 2,66,682/- which has been made in the show cause notice on the basis of certain amounts shown as received by the appellant in their accounts. The department has taken the view that such amount has been received in respect of services received by them. But the authorities below set aside the demand on the ground that such payment received by the appellant were not towards service. Consequently we find no reason to interfere with the finding that service tax cannot be demanded on such amount received.

8. In the light of the reasons, we upheld the impugned order and reject the appeal by the Revenue. C.O. is also disposed of.

(Dictated and pronounced in the open Court).

(V. Padmanabhan)
Member (Technical)

(Justice (Dr.) Satish Chandra)
President

Pant