IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-DB

COURT –IV

Service Tax Appeal No.ST/1457/2011- CU [DB]

[Arising out of Order-in-Appeal No.297(DKV)ST/JPR-I/2011 dated 06.07.2011 passed by the Commissioner (Appeals), Central Excise, Jaipur-I]

M/s. Meenesh Construction Co. …Appellant

Vs.

C.C.E., Jaipur-I … Respondent

Present for the Appellant : Ms. Rinki Arora, Advocate
Present for the Respondent: Mr.R.K. Maji, D.R.

Coram: HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. B.RAVICHANDRAN, MEMBER (TECHNICAL)

Date of Hearing / Decision : 09.01.2018

FINAL ORDER NO. 50127/2018

PER: B.RAVICHANDRAN

The appeal is against order dated 06.07.2011 of Commissioner (Appeals)-I, Jaipur. A Service Tax demand of Rs.5,32,526/- was confirmed against the appellant for the period 01.07.2003 to 19.07.2005 under the category of errection commissioning service rendered to M/s. IOCL with reference to setting up of Petrol Pumps at Kherli, Dausa & Usmanpur.

2. Ld. Counsel appearing for the appellant at the outset submitted that the appellant had closed operation in 2003. They have never done any work of errection of Petrol Pump for M/s. IOCL during the impugned period. They have only undertaken certain road works for Railways that too prior to closure of business. The Revenue proceeded against them based on certain information purported to have been provided by IOCL. Such information was not revealed to the appellant. In fact, when the notice was received to demand and recover Service Tax, the appellant replied on 25.06.2009 stating that they are involved only in road work under PMGSY Project and Railway Grit supply. They have closed their business in 2003. They are trying to get details from IOC based on which the present proceedings have initiated. However, the lower authorities proceeded to confirm the demand without any details or material support for such action.

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

4. Neither the original authority nor the first appellate authority has given details of work order and nature of work executed by the appellant to confirm the tax liability. The appellants repeatedly pleaded that they have closed their firm in 2003 itself. This was not considered by the lower

authorities. In fact, the impugned order put the onus on the appellant to establish that they have not rendered taxable service as alleged in the show cause notice. We find that the same is not sustainable, as basic legal principle is the person who is alleging should establish the fact. No material evidence is available in the proceedings before the lower authorities except information purported to have been received from IOCL. This is strongly denied by the appellant. In such situation we find that the impugned order cannot be sustained. It is open to the original authority, incase, if they have evidence of such taxable activity during the impugned period carried out by the appellant to proceed against the appellant after providing all the required details to the appellant in support of such allegation made in the show cause notice presently in dispute.

5. Accordingly, the impugned order is set aside with liberty to the original authority to proceed afresh after providing all the supporting details to the appellant and giving adequate opportunity to the appellant to defend their case.

[Dictated and pronounced in the open Court]

(B. RAVICHANDRAN)
MEMBER (TECHNICAL)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Anita