In the Customs, Excise & Service Tax Appellate Tribunal
West Block No.2, R.K. Puram, New Delhi-110066

Appeal No. ST/50496/2014
Arising out of Order-in-Original No. Commissioner/RPR/ST/98/213 dated 30.09.2013 passed by Commissioner CE & Customs, Raipur)

M/s A.S. Associates …Appellant

Vs

CCE Raipur …Respondent

Appearance:
Present for the Appellant : Shri Abhas Mishra, Advocate
Present for the Respondent : Shri Sanjay. Jain, AR

Coram:
HON'BLE JUSTICE (DR.) SATISH CHANDRA, PRESIDENT
HON'BLE MR V. PADMANABHAN, MEMBER (TECHNICAL)

Date of hearing: 24.01.2018
Date of decision: 01.02.2018

Final Order No.50436/2018

Per V. Padmanabhan

The present appeal is filed against the Order-in-Original No.98/2013 dated 30.09.2013 and covers the period of dispute 2007-08 to 2010-11. The appellant is engaged in providing Cargo Handling Service defined under Section 65(23) and taxable under Section 65(105)(zr) of the Finance Act, 1994. During the period under dispute, they were working as sub-contractor of M/s Delhi Assam Roadlines Corporation Ltd (DARCL), who was the main contractor for rendering service to M/s Vedanta Aluminum Limited. During the course of audit of the books of accounts of appellant in 2011, it was noticed that the appellant has not discharged Service Tax liability towards the amount received for providing Cargo Handling Services. After completion of investigation and issue of SCN dated 18.10.2012, Service Tax amounting to Rs.3,52,59,280/- was demanded along with interest and penalty. The same was confirmed by the impugned order and an amount of Rs.2,79,44,410/- already paid by the appellant during the course of investigation was appropriated. Aggrieved by the impugned order, the present appeal has been filed

2. With the above background, we heard Shri Abhas Mishra, ld Advocate for the appellant as well as Shri Sanjay Jain, DR for Revenue.

3. Shri Abhas Mishra, ld Counsel argued that during the period under dispute, the appellant has provided services to M/s DARCL as a sub-contractor and did not discharge the Service Tax, since M/s DARCL had promised to discharge the entire Service Tax liability on the amount received from M/s Vedanata Aluminum. He further submitted that they were under the bona fide belief that since the main contractor is discharging the liability on the whole of the gross amount received from M/s Vedanta, the appellant was not liable to pay any Service Tax on the services provided as a sub-contractor. In this connection, he brought to our notice the letter dated 20.12.2008 written by the appellant to the Jurisdictional Superintendent, Central Excise, Bhatapura in which they have brought to the department's notice the fact that they were not paying Service Tax since M/s DARCL was paying the same, in the light of the clarification issued by the DGST in

October, 2003. He further argued that in the light of the above letter, no allegations of fraud or suppression can be made against the appellant. Consequently, the demand made by invoking the extended period cannot be upheld.

4. The ld DR, on the other hand, justified the impugned order. He argued that sub-contractor is also a service provider and is required to discharge Service Tax on the service provided by him to the main contractor. In terms of the Cenvat Credit Rules, 2004, the main contractor will be eligible to avail Cenvat credit of the Service Tax paid by the sub-contractor. He, accordingly, submitted that no exemption can be granted to the appellant from payment of service tax on the ground of being a sub-contractor.

5. We have heard both the sides and perused the appeal record. There is no dispute about the fact that appellant is a service provider and has provided Cargo Handling Services to M/s Vedanta Aluminum Limited as a sub-contractor of M/s Delhi Assam Roadlines Corporation Limited (DARCL), who was the main contractor. But the appellant did not discharge the Service Tax on the consideration received by them on the ground that the entire value is already included by the main contractor, M/s DARCL, for payment of service tax by them. In this connection, they have referred to the clarification issued by DGST in October, 2003 to the fact that once the main contractor is paying service tax, the sub-contractor, whose entire value of service is sub-sumed in the value on which the Service Tax is paid by the main contractor, is not required to pay service tax

separately. It is also seen that the appellant has specifically brought it to the notice of the Jurisdictional Supdt. of Central Excise through his letter above dated 29.12.2008. An extract from this letter is reproduced below:

> *"Further I relation to service provided to Delhi Assam Road Ways Corporation, Hissar (Haryana) (here-in-after called as DARC), we are a sub-contractor. M/s Vedanta Aluminium Ltd. has grant order to DARC and DARC has forwarded the work to us as a sub-contractor. We do not provide any service directly to M/s Vedanta Aluminium Ltd. As a sub-contractor, the liability for payment of service arises upon DARC who have properly complied the same. The above said view has also been got supported by the clarification issued by DGST in Oct. 2003. The DGST in it's clarification has provided as under:-*
>
> *"Sub-contractor need not take a registration under service tax even if there is a total sub-contract. In all such cases, service tax is to be paid by main service provider."*
>
> *Xerox copy of DGST clarification is enclosed herewith for your ready reference and record.*
>
> *As per the above said clarification, the liability of service tax case upon DARC as be in the main service provided to M/s Vedanta Aluminium Ltd and DARC has properly fulfilled it. In this regard, we do hereby enclose herewith the followings:-*
>
> *01) Letter No.DARC/Ser.Tax/22/7220 dt. 23.12.2008 that the liability of service tax is upon DARC.*
>
> *02) Service Tax Registration Certificate as obtained from CBEC site.*
>
> *03) Challan*
>
> *From the above it's clear that on this service, the liability of service tax will cast upon DARC and not upon us."*

6. After going through the nature of the activity provided by the appellant, we are of the view that the service rendered is covered by the definition of 'Cargo Handling Services' and consequently, the liability for payment of Service Tax has arisen on the part of the appellant. In this connection, the CBEC circular No.96/7/2007-ST dated 23.08.2007 has clarified the issue as follows:

Referen ce code	*Issue*	*Clarification*
999.03/ 23.08.2 007	*A taxable service provider outsources a part of the work by engaging another service provided, generally known as sub-contractor.* *Service tax is paid by the service provider for the total work. In such cases, whet her service tax is liable to be paid by the service provider known as sub-contractor who undertakes only part of the whole work.*	*A sub-contractor is essentially a taxable service provider. The fact that services provided by such sub-contractors are used by then main service provider for completion of his work does not in any way alter the fact of provision of taxable service by the sub-contractor.* *Services provided by sub-contractors are in the nature of input services. Service tax is, there fore, leviable on any taxable services provided, whether or not the services are provided by a person in the capacity as a sub-contractor and whether or not such services are used as input services. The fact that a given taxable service is intended for us as an output service by another service provider does not alter the taxability of the service provided.*

7. The above circular has made it amply clear that services provided by the sub-contract and used by the main service provider is liable for payment of Service Tax in the hands of sub-contractor.

8. The demand for service tax has been upheld by issue of SCN invoking the extended time limit under proviso to Section 73 of the Finance Act, 1994. We have perused a copy of the letter dated 29.12.2008 issued by the appellant to the Jurisdictional Range Supdt., clearly intimating their bona fide understanding that they did not pay service tax since the main contractor is already paying the Service Tax. Further, they have also referred to a clarification issued by DGST in October, 2003, to this effect. In the light of the above, we are of the view that the department is not justified in invoking the extended time limit to demand service

tax from the appellant. Moreover, the entire details of amount has already been recorded in the books of account of the appellant and the same has been noticed only during the period of audit by the department.

7. In view of above discussions, we restrict the demand of Service Tax to that falling within the normal time limit. For quantifying the demand, as above, the matter is remanded to the adjudicating authority. He will also finalise the issue of penalty. In the result, appeals partially allowed.

(Pronounced in Court on 01.02.2018)

(Justice (Dr) Satish Chandra)
President

(V. Padmanabhan)
Member(Technical)

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