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

Date of Hearing/Decision:29.01.2018

Service Tax Appeal No.51758/2017(SM)

[Arising out of Order-in-Original No.BHO-EXCUS-001-APP-53-17-18 dated 26.07.2017 passed by the Commissioner (Appeals), Customs, Central Excise and Service Tax, Bhopal]

M/s.Ascent Marketing & Services Appellants

Vs.

CCE & ST, Bhopal Respondent

Appearance:

Rep. by Shri Sandeep Mukherjee, CA for the appellant.
Rep. by Shri G.R. Singh, AR for the respondent.

Coram: Hon'ble Shri S. K. Mohanty, Member (Judicial)

Final Order No.50640/2018

Per S.K. Mohanty:

This appeal is against the impugned order dated 26.07.2017 passed by the Commissioner (Appeals), Customs, Central Excise and Service Tax, Bhopal.

2 The brief facts of the case are that the appellants are engaged in providing service falling under the taxable category "Cleaning Service" as defined under Section 65(24b) of the Finance Act, 1994. During scrutiny of balance sheet vis-à-vis, ST-3 Returns for the period 2009-2010 and 2010-2011, it was observed by the Department that the taxable receipts shown in the ST-3 Returns were not in conformity with the income shown in the balance sheet. On the basis of such observations, the Department issued show cause notice, seeking confirmation of the service tax demand of Rs.3,41,960/- on the amount of Rs.83 lakhs shown in

the balance sheet for the period 2011-2012. The Adjudicating Authority vide order dated 26.08.2015 has confirmed such demand and also imposed penalties under various provisions of the Act on the appellant. In appeal, the ld.Commissioner (Appeals) has upheld an adjudged demand.

3. Ld. Consultant appearing for the appellant submits that the amount of Rs.83 lakhs reflected in the balance sheet for the year 2010-2011 were billed by the appellant in the subsequent financial year and the service tax attributable to such gross value was deposited by the appellant in respective years, on completion of the service. He also referred to the reply to the show cause notice dated 7.8.2015, specifically indicating that the bills were issued in the subsequent financial year and the service tax amount was paid in such years. Thus, he submits that since the bills were raised during the year 2011-2012 and the appellant did not complete the work in the said year, it was not liable to pay service tax for the year 2011-2012.

4. On the other hand, ld. DR for the Revenue reiterated the findings recorded in the impugned order.

5. Heard both sides.

6. I find that the appellant vide their reply to the show cause notice dated 7.8.2015 has categorically brought to the notice of the Adjudicating Authority that the amount of Rs.83 lakhs reflected in the balance sheet for the period 2011-2012 were billed to the customers in the subsequent financial year and the service tax amount was deposited into the Government Account on raising such bills on the customers/service receivers. This submission of the appellant confirms the fact that it had not provided the service during the period 2011-2012. Since no complete services were provided during 2011-2012 and no bills were raised, the appellant

was not under any statutory obligation to deposit service tax as confirmed by the Department against it.

7. Therefore, I do not find any merit in the impugned order in confirming the adjudged demand against the appellant. Accordingly, after setting aside the same, the appeal is allowed in favour of the appellant.

[order dictated and pronounced in the open court]

(S.K. Mohanty)
Member (Judicial)