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

Date of hearing: 21.03.2018
Date of pronouncement: 12.04 2018

S. T. Appeal No. 1219 of 2011
(Arising out of order in original No. 10/2011/ST/JPR-II/2011 dated 13.05.2011 passed by the Commissioner of Central Excise-II, Jaipur.)

M/s Shree Mohangarh Construction Co. Appellant

Vs.

CCE, Jaipur-II Respondent

AND

S.T. Appeal No. 1262 of 2011 with C.O. No. 66 of 2012
(Arising out of order in original No. 10/2011/ST/JPR-II/2011 dated 13.05.2011 passed by the Commissioner of Central Excise-II, Jaipur.)

CCE, Jaipur-II Appellant-Revenue

Vs.

M/s Shree Mohangarh Construction Co. Respondent-assessee

Appearance:

Sh. O. P. Agarwal, C.A. for the assessee
Sh. Amresh Jain, AR for the respondent-Revenue

Coram:

Hon'ble Mr. S. K. Mohanty, Member (Judicial)
Hon'ble Mr. V. Padmanabhan, Member (Technical)

Final Order Nos. 51322- 51323/2018

Per: **V. Padmanabhan**:

These two appeals by assessee as well as Revenue are against the Order-in-Original No. 10/2011 dated 13.05.2011. These appeals have challenged different portions of the impugned order. By the impugned order, out of total amount of Rs. 61 lakhs demanded in the show cause notice, the Adjudicating Authority dropped the demand of about Rs. 34 lakhs on various grounds and confirmed the balance demand to the extent of Rs. 26 lakhs. The assessee is challenging the confirmation of Service Tax demand of around Rs. 26 lakhs whereas the Revenue is in appeal against a portion of the demand dropped by the Adjudicating Authority. Part of the Revenue appeal also is against the ground on which the amount of Rs. 26 lakhs has been confirmed.

2. With the above background, we heard Shri O.P. Agarwal, ld. C.A. appearing for the assessee and Sh. Amresh Jain, ld. AR for the Revenue.

3. Ld. Counsel for the assessee referred to the grounds of appeal. He submitted that out of the amount of Rs. 26 lakhs confirmed in the impugned order, the assessee is not challenging the amount of Rs. 9,11,262/- which was confirmed under the category of "Commercial or Industrial Construction Service" (CICS). The demand is confirmed as follows:

Sl. No.	*Nature of service*	*Classification as per SCN*	*Period*	*Amount of service tax*
a	*Construction of booster pumping station and raw water reservoir for M/s GLTPP (M/s PRVUNL) on behalf of Sh. Avantika Contractors*	*Commercial or industrial Construction*	*2008-09*	*1,12,748/-*
B	*Construction of raw water reservoir and other civil work of M/s GLTPP (M/s PRVUNL) & others*	*Commercial or industrial Construction*	*1008-09*	*9,02,465/-*
C	*Excavation in tranch and laying of*	*Commercial or industrial*	*1008-09*	*2,00,700/-*

	pipeline and refilling to army area on behalf of Larsen & Toubro Ltd.,	*Construction*		
d	*Rerouting of existing raw water pipeline including supply of factory made MS Pipes, laying, welding, erection, testing, commissioning & civil works of RVUN.*	*Commercial or industrial Construction*	*2008-09*	*9,11,262/- (not challenged)*
e	*Civil works in Well Pads at Rajasthan Northern Area Development Project of Larsen & Toubro Ltd.*	*Commercial or industrial Construction*	*2008-09*	*4,26,295/-*
f	*Transportation and unloading of cement bags from railway wagon to department store.*	*Cargo Handling* *GTA*	*2008-09* *2008-09*	*32,843/-* *16,421/-*
			Total	*26,02,734/-*

Ld. Consultant submitted that in respect of Sl. No. a, b, c, & e of the table above, the classification of the activity was proposed under CICS in the show cause notice whereas the Adjudicating Authority has confirmed such demand under Works Contract Service (WCS). He argued that such confirmation is travelling beyond the show cause notice and hence not sustainable. In this regard, he relied on the Tribunal decision in the case of ***Ashish Ramesh Dasarwar vs. CCE&ST, Nagpur- 2017-TIOL-3230-CESTAT-MUM*** (para 6).

He further referred to point ‘f’ of the table above and submitted that the assessee is challenging the confirmation of demand of Rs. 16,421/- under the category of GTA as the same is beyond the show cause notice. In the show cause notice the service pertaining to this was proposed for classification under Cargo Handling Service.

4. In respect of the demand confirmed under Sl. No. a, b, c & e above, ld. AR argued that even though the Adjudicating Authority has confirmed the demand of Service Tax under WCS, he should not have granted the benefit of Works Contract Composition Scheme since the assessee did not exercise the option for such composition scheme. With reference to point ‘f’, ld. AR submitted that the amount of Rs. 16,421/- stands confirmed under GTA, but it should have been demanded under the category of Cargo Handling Service as proposed in the show cause notice.

Ld. AR further submitted that the Commissioner in para 26 and 27(i) of the impugned order has classified the services under Transport of Goods by Road Service instead of Cargo Handling Service as proposed in the show cause notice. Revenue is aggrieved by such dropping of Service Tax demands of Rs.5,70,233/- and Rs.1,50,926/-. He further submitted that the trucks which were used for transportation of the goods were of the service recipient.

5. Heard both sides and perused the appeal record.

6. The dispute in the present case is regarding various construction activities carried out by the assessee during the period 01.04.2008 to 31.03.2009. Out of the total Service Tax demanded in the show cause notice

amounting to Rs. 61,01,025/-, the Adjudicating Authority dropped the demand to the extent of about Rs. 34 lakhs and confirmed the balance amount. The assessee has challenged a part of the Service tax confirmed against him. They are not disputing the liability to the extent of Rs. 9,11,262/- in respect of the work carried out to RVUN towards rerouting of existing raw water pipelines. In respect of rest of the confirmation of Service tax demand in the impugned order, the main ground for challenge is that the show cause noticed as proposed demand of Service tax under the category of CICS whereas the Adjudicating Authority has upheld such demands under the category of WCS after analysing various activities in detail. It is fairly well settled position of law that the Adjudicating Authority cannot travel beyond the allegation made in the show cause notice.

7. We have perused the Tribunal decision in the case of ***Ashish Ramesh Dasarwar*** (supra) relied upon by the ld. Counsel for the assessee. In the said decision the Tribunal has set aside the demand of service tax in a similar situation in which the show cause notice proposed classification under CICS whereas the Adjudicating Authority upheld the demand of Service tax under WCS. We are of the view that the said decision of the Tribunal is applicable to the fact of the present case.

8. The Revenue has also filed appeal contending that in respect of the Service Tax demands upheld under the category of WCS, the assessee will not be entitled to the benefit of WCS Composition Scheme inasmuch as they have not opted for the same. As discussed in the above para, we are of the view that

even the demand confirmed under WCS by the Adjudicating Authority are liable to be set aside for the reason that the Adjudicating Authority has travelled beyond the show cause notice. Consequently, we set aside the entire demand made under WCS except the portion of Rs. 9,11,262/- which is not contested by assessee. We also dismiss the grounds raised by the Revenue in this regard.

9. The other limb of the dispute is regarding the demand raised on amount received towards transportation and unloading of cement bags from Railway wagon. In para 26 and 27(i) of the impugned order, the Adjudicating Authority has classified the services under Transport of Goods by Road Service whereas the show cause notice had proposed classification of the same under Cargo Handling Services. It has been held that the trucks which were used for transportation of the goods were belonging to service recipient. The Revenue in their appeal has challenged this finding with the argument that in the absence of any record evidencing the ownership of the trucks, the service ought to have been classified under Cargo Handling service.

The assessee has also challenged the similar finding recorded by the Adjudicating Authority in para 24 of the impugned order. In this para the Adjudicating Authority has confirmed part of the demand under Cargo Handling service amounting to Rs. 32,843/- and certain part under GTA amounting Rs. 16,421/-.

After perusal of the record, we note that nothing is forthcoming in the record justifying the view taken by the Adjudicating Authority to the effect that the trucks which were used for transportation of the goods were belonging to the service recipient. Consequently, we set aside the finding of the Adjudicating Authority in para 24, 26 and 27 (i) of the impugned order and remand the matter to the Adjudicating Authority for denovo decision on the subject. The assessee will be free to submit documentary evidence in support of their claim and the Adjudicating Authority will pass denovo decision after extending the opportunity of personal hearing to the assessee.

10. In view of the above discussion, we set aside the demand for Service tax made under WCS. But we uphold the demand amounting to Rs.9,11,262/- which is not challenged by the assessee. The issue is remanded for denovo decision in respect of the Service tax demand under Cargo Handling/ GTA service. The appeal is partly allowed. Cross objection also stand disposed of accordingly.

(Pronounced on 12.04.2018).

(S. K. Mohanty)
Member (Judicial)

(V. Padmanabhan)
Member (Technical)

Pant