CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Service Tax Appeal No. 50367 of 2014 with
Service Tax RoA No. 50131 of 2018

(Arising out of Order-in-Appeal No. 117(VC)ST/JPR-I/2013 dated 06.09.2013 passed by the Commissioner of Customs & Central Excise (Appeals), Jaipur)

DATE OF HEARING : 12.04.2018
DATE OF DECISION : 12.04.2018

M/s Shree Mangalam …. Appellants
(Rep by Ms. Ashmita Nayak, Adv.)

VERSUS

CCE, Jaipur-I …. Respondent
(Rep. by Sh. G.R. Singh, DR)

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

FINAL ORDER NO. 51399/2018

PER V. PADMANABHAN :

After hearing both sides, we recall our earlier Final Order No. 57273/2017 dated 16.10.2017 where the appeal was dismissed for non-prosecution, for the reasons mentioned in the RoA Application. The appeal is restored to its original number.

2. With the consent of both sides, we proceed to decide the appeal on merits.

3. The present appeal is filed by the assessee-Appellants against the Order-in-Appeal No. 117(VC)ST/JPR-I/2013 dated 06.09.2013 passed by the Commissioner of Customs & Central Excise (Appeals), Jaipur. The period in dispute is 2004-05 to 2005-06.

4. The brief facts of the case are that, during the period under consideration, the assessee-Appellants were engaged in providing taxable services falling under 'Business Auxiliary Service' under Section 69 of the Finance Act, 1994. During the course of audit, it was observed by the Department that the assessee-Appellants were carrying out certain job work for their parent company, M/s Shree Auro Iron Ltd., as well as others. The nature of the job work is cutting of HR/MS Sheets. They received job charges for the same and service tax is being paid under 'Business Auxiliary Service'. The Department was of the view that the Service Tax on such job charges was not discharged in full and hence a show cause notice was issued proposing to demand Service Tax on the amount of job charges said to have been received, but for which Service Tax was not paid. The same was confirmed by both the authorities below. Being aggrieved, the assessee-Appellants have filed the present appeals.

5. With this background, we have heard Ms. Asmita Nayak, learned counsel for the assessee-Appellants and Sh. G.R. Singh, learned DR for the Revenue.

6. It is the submission of the learned counsel that the demand has been made on the amount of job charges noticed by the Audit Officers during the course of audit, but the Department by mistake has included the following :

(a) The Service Tax on the job charges was paid by the assessee-Appellants on receipt basis. The Department has proceeded to demand the Service Tax on the total job charges by over-looking the demand that some of the job charges were received subsequently and then subsequently the Service Tax has since been paid. The contention raised by them before the adjudicating authority was not considered.

(b) The Department has also included certain amount received by M/s Shree Auro Iron Ltd. as commission from SAIL. The amount received by their parent company, M/s Shree Auro Iron Ltd. by way of trade discount from M/s SAIL on their activity of authorised dealer for M/s SAIL. By mistake the Department has included such amount in the total job charges received by the assessee-Appellants and Service Tax has also been demanded on the same. But, it is her submission that the amount, which pertains to activity carried out by M/s Shree Auro Iron Ltd., has no connection with the activity of job work carried out by them.

7. The learned DR justified the impugned order. On the issue of trade discount, he submitted that the Service Tax has been demanded on the amount of "commission and trade discount" which has been mentioned in the consolidated balance sheet. From the documents on record, it cannot be concluded that such commission/trade discount was pertaining to the activity of M/s Shree Auro Iron Ltd. and such details will need to be verified.

8. After hearing both sides and on perusal of the material available on record, we find that Service Tax demand has been raised under the category of "Business Auxiliary Service" on the amount of job charges and commission received. As regards job work charges is concerned, it has been argued that the demand of Service Tax has been made on receipt basis. The dispute pertains to the period 2005-06 and we note that during the said period the Service Tax was payable on the amount receipt basis. Hence, the actual receipt of commission and the service tax payable thereon will need to be verified by the original authority.

9. In respect of the amount of "commission/trade discount", it is submission of the assessee-Appellants that such amount does not pertain to the activity of job work carried out by them, but pertains to the activity of selling of the product from M/s

SAIL. This aspect has not been discussed in either of the orders before us.

10. In view of the above, we set aside the impugned order and remand the matter to the adjudicating authority for consideration of the submissions made by the assessee-Appellants and to pass *de novo* orders, but by providing a reasonable opportunity to the assessee-Appellants to present their case with liberty to file additional documents, if any, as per law.

11. In the result, the appeal filed by the assessee-Appellants is allowed by way of remand.

(Dictated & pronounced in the open court)

(V. PADMANABHAN)
MEMBER (TECHNICAL)

(JUSTICE Dr. SATISH CHANDRA)
PRESIDENT

Golay