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

Date of hearing/decision: 07.05.2018

S.T. Appeal No. 506 of 2012
(Arising out of Order-in-Original No. 70/2011(ST)-Commissioner dated 08.12.2011 passed by the Commissioner, Central Excise, Jaipur).

M/s Dynamic Enterprises Appellant

Vs.

CCE&ST, Jaipur Respondent

Appearance:

Ms. Rinky Arora, Advocate for the appellant
Sh. G. R. Singh, AR for the Respondent

Coram:

Hon'ble Mr. V. Padmanabhan, Member (Technical)
Hon'ble Mr. Ajay Sharma, Member (Judicial)

Final Order No. 51736/2018

Per: **V. Padmanabhan**:

The present appeal is against the Order-in-Original No. 70/2011 dated 08.12.2011.

2. The appellant is engaged in providing various services to Railway viz. Cleaning Services, Management, Maintenance, Repair Services, Cargo Handling Services etc. The dispute covers the period 2005-2006 to 2009-2010 during which the Department took the view that the various services provided by the appellant were liable to payment of service tax and after issue of show cause notice, the impugned order was passed in which total service tax demand amounting Rs.1,04,48,970/- was confirmed alongwith payment of interest and

penalties under various Sections of the Finance Act, 1994. The total demand of service tax has been made under the following categories:

S. No.	Description of receipts	Amount received	Service tax demanded as per OIO	Category under which service tax confirmed	Service tax paid
1	*Mechanised washing and cleaning of mail express and passenger trains etc.*	*63790824/-*	*7251533/-*	*Cleaning Services*	
2	*Cleaning and railway running rooms, washing and cleaning of bed sheets, pillow covers and miscellaneous items.*	*13344287/-*	*1522397/-*	*Manage-ment, maintenance or repair services*	
3	*Water tightening of wagons in monsoon season.*	*4386210/-*	*507889/-*	*-do-*	
4	*Maintenance of passenger amenities.*	*998200/-*	*123008/-*	*-do-*	*123008/-*
5	*Running maintenance, repair, replacement of defective carriage watering hydrants and provisioning & maintenance of water fitting hoes including watering of railway coaches.*	*1701280/-*	*189637/-*	*-do-*	*189637/-*
6	*Supply, maintenance and supervision of mechanised machineries for cleanliness of various railway stations.*	*5264686/-*	*582904/-*	*Supply of tangible goods services*	

7	*Washing & dry-cleaning.*	*2466985/-*	*271602/-*	*Dry-cleaning services*	*2,873/-*
	Total	*91952472/-*	*10448970/-*		*315518/-*

Challenging the above demand of service tax, the present appeal has been filed.

3. With this background, we heard Ms. Rinky Arora, ld. Advocate for the appellant and Sh. G. R. Singh, ld. AR for the Revenue.

4. We discuss the service tax demand on various heads below:-

(i) First we look the demand of service tax made in regard to Mechanised washing and cleaning of mail / express and passenger trains etc. Ld. Advocate submitted that the above services are not liable to service tax under the category of cleaning services as defined under Section 65 (105)(zzzd) read with Section 65 (24b) of the Finance Act, 1994 in view of the decision of the Tribunal in the case of ***M/s R. K. Refreshment and Enterprises Pvt. Ltd. And Another*** decided by the Tribunal vide Final Order No. 50298 – 50299/2018 dated 22.01.2018. Opposing the above condition, ld. AR submits that the activity involved not only covers the cleaning of railway wagon but also cleaning of various Railway premises alongwith the railway track. He submits that the Railway have been held as covered under the category of 'Commercial' and the cleaning of railway premises have been held to be liable to payment of service tax by the Tribunal in the case of ***Mukesh Kalway vs. CCE, Bhopal-2017 (3) GSTL 183 (Tri. Del.).***

We have considered the submissions made by both the sides in respect of mechanised washing and cleaning of mail/ express, passenger trains etc. In the decision of the Tribunal in the case of ***M/s R. K. Refreshment and Enterprises Pvt. Ltd. And another*** the view taken is that the Tribunal observed that Railway coaches are in the nature of rolling stock of railways and cannot be covered within the definition of cleaning services – either as objects or premises of commercial or industrial building. We find that in the decision of ***Mukesh Kalway*** (supra) the Tribunal has discussed the taxability of cleaning activity of railway premises. After perusing both the decisions, we are of the view that service tax levy of cleaning service cannot be levied on cleaning of railway wagons and coaches, as has been held by the Tribunal in the case of ***M/s R. K. Refreshment and Enterprises Pvt. Ltd. and Another.*** However, in respect of railway buildings, premises, the same will be covered under the category of cleaning of commercial or industrial buildings and premises thereof and hence liable to payment of service tax under the Cleaning Service. Since the adjudicating authority has clubbed both the categories and raised demand of service tax amounting Rs. 72,51,533/- under Cleaning Service, we direct the original authority to bifurcate the demand and confirm the same only to the extent of the cleaning activity of railway premises.

5. Next we turn to Cleaning and house-keeping of railway running rooms, washing and cleaning of bed sheets, pillow covers etc. The adjudicating authority has demanded the service tax on these services under the category of management, maintenance or repair service. We have perused some of the contracts executed by the appellant with the Railway. As observed by us in the

previous paragraph, cleaning and house-keeping of railway running rooms are liable to service tax under Cleaning Service. Washing and cleaning of bed sheets, pillow covers etc. are also more appropriately classified under Cleaning Services rather than under 'Management, Maintenance & Repair Service'. Ld. Advocate, at this point submits that these services were proposed for classification under the category of management, maintenance or repair services and as such classifying the same under cleaning service will be travelling beyond the show cause notice.

From the perusal of the relevant show cause notice, we find that it cannot be readily observed whether the services falling under this category were proposed for classification under management or maintenance service. Hence, we direct the adjudicating authority to uphold the demand of service tax under this category if the same was proposed for classification, in the show cause notice under the category of cleaning service. If it is otherwise, the appellant will be entitled to the benefit of travelling beyond the show cause notice.

6. Next we consider the services categorised under water tightening of wagons in monsoon season, maintenance of passenger amenities, running maintenance, repair, replacement of defective carriage watering hydrants and provisioning & maintenance of water etc. Ld. Advocate submits that the appellant is not seriously disputing the liability of the above services to payment of service tax. She further submits that in respect of maintenance of passenger amenities and running maintenance, repair etc. the service tax liability has already been paid alongwith interest and hence she prays for waiving of the penalty levied on this portion of the service tax demand.

We uphold the service tax demand in respect of the three categories under the maintenance, management or repair service. The tax will be liable to be paid alongwith interest, if not already done. However, since this involves interpretation and classification of the service into different categories, we are of the view that the penalty applicable on these services can be waived in respect of Section 80 if the service tax liability with interest has already been paid prior to issuance of show cause notice.

7. Now, we turn to supply, maintenance and supervision of mechanised machineries to be used for cleaning of various railway stations. The appellant has supplied the above machines to the railway and for the consideration received, the adjudicating authority has charged service tax under the category of Supply of Tangible Goods Service. Ld. Advocate submits that the nature of the contract is such that the same will not fall within the category of Supply of Tangible Goods Service, but is to be considered as deemed sale, which will be liable to payment of VAT. At this point, ld. AR submits that from the record it is not evident whether the VAT is paid.

After hearing both sides and on perusal of record, we note that the service is to be considered as supply of tangible goods service only in those cases which do not fall within the ambit of VAT. The adjudicating authority is directed to verify the claim of the appellant that VAT applicable to the transaction have been paid and if so the demand for service tax is to be set aside.

8. In respect of washing and dry-cleaning services, since the ld. Advocate is not pressing the same, we uphold the levy of service tax on this part.

9. In the result, appeal regarding the demand of service tax is disposed of in the above terms. The appellant will be at liberty to submit documentary evidence before the lower authorities in respect of those services which are to be re-determined.

(Dictated and pronounced in the open Court).

(Ajay Sharma)
Member (Judicial)

(V. Padmanabhan)
Member (Technical)

Pant