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

Date of hearing/decision: 16.05.2018

S. T. Appeal No. 3217 of 2012
(Arising out of Order-in-Appeal No. 145(RDN)ST/JPR-I/2012 dated 26.07.2012 passed by the Commissioner (Appeals), Central Excise, Jaipur)

M/s Rajtech Consultancy & Services Pvt. Ltd. Appellant

Vs.

CCE, Jaipur-I Respondent

Appearance:

Ms. Surbhi Sinha, Advocate for the appellant
Sh. G. R. Singh, AR for the Respondent

Coram:

Hon'ble Mr. V. Padmanabhan, Member (Technical)
Hon'ble Ms. Rachna Gupta, Member (Judicial)

Final Order No. 51940/2018

Per: **V. Padmanabhan**:

The present appeal is against the Order-in-Appeal No. 145/2012 dated 26.07.2012.

2. The appellant, during the period 2004-05 and 2005-06 acted as an agent of ICICI Prudential Life Insurance Limited and ICICI Housing Finance Limited and for service rendered, received commission. The Revenue was of the view that the commission received will be liable to payment of service tax under the category of 'Business Auxiliary Service' (BAS) during the above period. Accordingly, show cause notice was issued and the demand of service tax amounting to Rs. 2,25,618/- was confirmed alongwith interest and

penalties under various sections of the Finance Act, 1994. The impugned order has been challenged before us.

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

4. It is the submission of the ld. Advocate that in respect of Insurance business, the person liable for payment of service tax, on reverse charge basis has been specified in Rule 2(1)(d) of the Service Tax Rules, 1994 to be the person carrying on Insurance business. Accordingly, appellant claimed that the service tax involved in the service has already been paid by ICICI Prudential Life Insurance Company. Hence, it is submitted that the levy of service tax once again on the appellant is not justified. She further submits that in any case, the penalties under both Sections 76 and 78 is not leviable in view of the decision of the ***CCE vs. Pannu Property Dealers, Ludhiana – 2011 (24) STR 173 (P&H)***.

5. Ld. AR appearing for the Revenue countered the arguments and justified the impugned order. He submits that the reverse charge mechanism specified under Rule 2(1)(d) of the Rules is in relating to Insurance business. However, the demand in the present case is relating to the commission received by the appellant in respect of the service rendered to ICICI Prudential Life Insurance Limited and ICICI Housing Finance Limited. Such commission is falling within the category of BAS and he prayed for the service tax to be upheld. He further submitted that the appellant has failed to file relevant ST-3 returns and even after taking the registration under BAS, they have failed to pay the service tax for the disputed period. Ld. AR also

submitted that both the penalties are liable to be paid in the disputed period in view of the Tribunal's decision in the case of ***Ramawat Construction Ltd. vs. CCE, Jaipur-II*** (Final Order Nos. 53206 – 53207/2017 dated 12.05.2017).

6. We have heard both sides and perused the record. The dispute in the present case is with reference to the liability for service tax under BAS, in respect of the commission earn by the appellant for selling of ICICI Prudential Life policy as well as loans of ICICI Housing Limited. It is evident from the facts of the case that the service provided by the appellant is not falling within the category of Insurance Business but is covered by the definition of BAS. Consequently, the plea taken by the appellant that the service tax involved therein has already been paid by the insurance company under reverse charge basis under Rule 2(1)(d) of the Rules is rejected.

7. Since the activities clearly are falling within the category of BAS, we are of the view that the service tax demand for the disputed period is required to be upheld. It is also seen that the appellant has failed to file the necessary service tax returns and have suppressed from the Department, that they were rendering the service during the disputed period. Consequently, we find no reason to interfere with the finding of the lower authorities that the demand can be raised under the extended period of limitation.

8. On the issue of penalties, we have considered the rival submissions and both the sides relied on different case laws. We note that the recent judgment of the Tribunal in the case of ***Ramawat Construction Co.*** (supra) is application to the facts of the present case in which it has been held that the penalties under both Sections 76 and 78 are liable to be imposed.

9. By following the above decision, we upheld the impugned order and reject the appeal.

(Dictated and pronounced in the open Court).

(Rachna Gupta)
Member (Judicial)

(V. Padmanabhan)
Member (Technical)

Pant