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

Date of hearing/decision: 04.05.2018

S. T. Appeal No. 2133 of 2012

(Arising out of Order-in-Original No. 25/2012/ST/JPR-II dated 04.05.2012 in Appeal No.ST/2133/2012 and Order-in-Original No.25/2012/ST/JPR-II-Commr dated 30.03.2012 in Appeal NO.ST/2301/2012, passed by the Commissioner of Central Excise , Jaipur-II)

M/s J. P. Singhal & Co. Appellant

Vs.

CC (Prev.), Jaipur Respondent

AND

S.T. Appeal No.2301/2012

CC, Jaipur-II Appellant

Vs.
M/s. J.P. Singhal & Co. Respondent

Appearance:

Rep. by Shri O.P. Agarwal, CA for the Assessee.
Rep. by Shri G.R. Singh, DR for the Department.

Coram:

Hon'ble Mr. S. K. Mohanty, Member (Judicial)
Hon'ble Mr. C. L. Mahar, Member (Technical)

Final Order Nos. 52029-52030/2018

Per: **S. K. Mohanty**:

Heard both sides and perused the appeal records.

2. In the impugned order, ld. Adjudicating Authority has confirmed service tax demand under different categories of services. As such, for convenience of reference, we are discussing the different services:-

3. Supply of tangible goods –

The appellant submits that the bunk house accommodation is created at the site of the client and therefore, such activity cannot be taxed under the category of "supply of tangible goods". To support such stand, the appellant has relied on the decision of this Tribunal in the case of **Hotel Kailash International – 2018 – TIOL-434-CESTAT-DEL**.

For ascertaining the nature of activities provided by the appellant to its client, we have perused the agreement placed in the case records. If bunk house is created at plot at site with various components and accessories, the same cannot be subjected to levy of service tax under supply of tangible goods service. Further, since the appellant, at this juncture, did not produce any proof of documentary evidence to show that such bunk house was created at site, we are of the view that the matter should go back to the Adjudicating Authority for proper appreciation of the facts. While adjudicating the matter, the Original Adjudicating Authority should also look into the decision of this Tribunal in the case of **Hotel Kailash International (supra)**.

With regard to "supply of air-conditioners and generators", the appellant submits that those supplies were made prior to 16.05.2008 when supply of tangible goods were not the taxable category of service tax. Thus, he submits that supply of these goods should not be liable to be taxed. For ascertaining the taxability of such supply, as contended by the appellant, we are of the view that the Original Authority should look into the documents for his satisfaction whether these supplies were effected prior to 16.05.2008 or thereafter. If the supplies were made before 16.05.2008, then as a natural corollary, the service tax demand can not be confirmed on the appellant.

"Supply of camp used for residence of labourers" cannot be considered as a taxable service under the "supply of tangible goods service". Inasmuch as, camp as such is not supplied by the appellant and the same was already at the site of client. Thus, service tax demand on supply of camp cannot be taxed under "supply of tangible goods service". However, we are of the view that facts as contended by the appellant can only be verified by the adjudicating authority. We ask the Original Adjudicating Authority to verify the facts once again and decide the matter afresh.

4. Renting of immovable property:

The appellant submits that the amount debited towards such service in the Cenvat Credit Account has not been considered by the Original Authority while adjudicating the dispute. Therefore, we remand the matter to the Original Adjudicating Authority for proper factual finding where the amount in question has been debited by the appellant from its cenvat credit account. If the amount has already been debited, as given by the appellant, the demand should be on such account, which should be dropped by the Original Authority.

5. Supply of Manpower :

The appellant contended that they have deposited service tax amount towards such category of service. Since there is no specific finding with regard to payment made by the appellant, at this juncture, we are of the view that this matter should also be remanded to the Original Authority for necessary verification.

Accordingly, the matter is remanded for ascertaining the compliance of tax deposited by the appellant.

6. Commercial & Residential Complex Service:

In this case, show cause notice had proposed to confirm the demand under taxable category of "Commercial & Industrial Construction Service". In this regard, it is contended that the appellant was sub-contractor of M/s. L& T only for the construction of the 'Road', while the demand has been confirmed under the taxable category of "Site Formation Service". It has also been argued that there are several judgements, delivered by the judicial forums, wherein it has been held that construction of road is not taxable. We are of the view that the adjudicating authority has travelled beyond the scope of SCN inasmuch as it had proposed for confirmation of demand under 'CICS', whereas the demand was confirmed under "Site Formation Service" in the adjudication order. Change in classification of service in the adjudication order is not proper and justified. Thus, the demand in this count is liable to be set aside. Accordingly, it is ordered so.

7. The appellant also contended that excess service tax paid in respect of taxable service viz. security service, GTA and rent-a-cab service amounting to Rs.1,42,723/- has not been considered during the course of investigation. Further, the appellant also contended that the amount of Rs.15,00,000/- deposited under protest, during the course of investigation, though was appropriated in the adjudication order but the said amount was also confirmed as service tax demand additionally, resulting in double confirmation of the said amount. Since we are remanding the matter to the Original Authority, for consideration of other issues, we are of the view that the this particular aspect of excess payment and the amount

deposited during the investigation should also be addressed properly by the Original Authority, after receipt of the compliance from the appellant.

8. On going through the appeal records, preferred by Revenue, we find that the Revenue assailed the impugned order on the ground that the word "suppression" has not been mentioned in the operative part of the order. Since the Original Authority has invoked the proviso to Section 73 (1) of the Finance Act, 1994 and imposed penalty under Section 78 of the said Act, mere non-mentioning the word "suppression" will not deprive the Revenue, in any manner, for which the appeal cannot be preferred before the Tribunal. Therefore, we dismiss the appeal by Revenue.

9. Both the appeals are disposed of in the above terms.

(Order dictated & pronounced in open court)

(C. L. Mahar)
Member (Technical)

(S. K. Mohanty)
Member (Judicial)

Ckp