IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. IV

Service Tax Appeal No. 54060 of 2014

[Arising out of the Order-in-Original No. 08/AKJ/CST/2014 dated 31.03.2014 passed by Commissioner of Service Tax, New Delhi**]**

M/s. Skylark Hi Tech Solutions P Ltd. Appellants

Vs.

CCE, New Delhi Respondent

Appearance:

Shri A K Batra, CA & Ms Vibha Narang, Advocate for the Appellants
Shri G R Singh, AR for the Respondent

CORAM:

Hon'ble Mr. C L Mahar, Member (Technical)
Hon'ble Ms. Rachna Gupta, Member (Judicial)

Date of Hearing : 06.08.2018
Date of Decision : 05.12.2018

FINAL ORDER No. 53357/ 2018

Per C L Mahar:

Brief facts of the matter are that the appellants are engaged in providing security agency service, manpower supply service and management. They have got themselves registered with the Service Tax department.

2. The department working on an intelligence that the appellants are not discharging the Service Tax liability correctly and they have been indulging in suppression of taxable value on various services provided by them, has searched the premises of the appellant on 28/29.3.2012. From the investigation, it has transpired that since 2009-10 to 2011-12, the value of taxable service declared by them under ST 3 returns was much less than what was declared in the balance sheet and books of accounts of the appellant firm for various financial years. After detailed investigation, a Show cause notice dated 16.10.2012 came to be issued to the appellant which was adjudicated by learned Commissioner (Service Tax) vide his order-in-original dated 08/AKJ/CST/2014 dated 31.3.2014 wherein the Service Tax amount of Rs.65,96,430/- was confirmed under section 73(1) of the Finance Act, 1994. An equal amount of penalty has also been imposed under section 78 of the Finance Act. The order-in-original also mentioned appropriation of amount of Rs.31,24,257/- which was voluntarily deposited by the appellant during the course of investigation. A general penalty of Rs.10,000/- has also been imposed under section 77. The appellants are before us against the above mentioned order-in-original. Assailing findings of the above mentioned order-in-original, learned advocate has contended that before 1.7.2011, the service tax was payable on receipt basis and not on accrual basis.

3. It has been submitted that the figures taken in the balance sheet for financial year 2009-10 onwards, are on accrual basis and since before 1.7.2011, the leviability of service tax was on receipt basis and therefore, the figures given in the balance sheet cannot be taken as basis for demand of service tax. It has been further contended that transitional provisions of Point of Taxation Rules, 2011, provided that where the provision of services were completed prior to 30.06.2011 or where the invoices are issued upto the 30th day of June, 2011, the point of taxation shall, at the option of the taxpayer, be the date on which the payment is received or made as the case may be. That w.e.f. 01.07.2011, they had discontinued the services due to lack of business, therefore whole of their liability towards service tax was to be computed on a value arrived at on receipt basis. It has been contended that if demand for the period 2009-10,2010-11 and 2011-12 (upto 30.06.2011) is calculated on receipt basis, the demand to the extent to 28,50,438/- is liable to be dropped. The Ld. advocate has further claimed that they had paid an excess amount of Rs. 3,00,221/- towards their service tax liability in ST-3 returns, which needs to be appropriated and adjusted against the demand confirmed. The learned advocate has also submitted that the adjudicating authority has failed to give them benefit of cum duty benefit while calculating the service tax demand on them. Learned advocate has relied upon the following case laws in support of their claim:

1. ***M/s. Whitecliff Tea Pvt. Ltd. vs. CCE Indore [2018 (2) TMI 1414-CESTAT, New Delhi]***

2. ***M/s. Candid Security Services vs CCE & ST Raipur [2018 (6) TMI 808 —CESTAT, New Delhi]***

4. Learned advocate has also contended that the show cause notice is vague in nature as Service tax has not been demanded under specific category of service and it mentions both security agency service and manpower supply service while demanding service tax from them. It has also been added that while providing security agency services and manpower supply services, the appellant also supplies work force on service charge and wages and on the value service charge, theappellant have duly discharged its service tax liability. However, on account of wages, salary, PF etc. which are recovered from the clients as a reimbursement of expenses for payment given by the appellant to the persons employed for security and manpower supply service and therefore, same need to be excluded from the gross value of the services received by the appellant.

5. Learned advocate has also contended that the demand is hit by period of limitation as the assessee has discharged their Service Tax liability and is also been filing ST 3 return regularly. Regarding the reimbursability of expenses, the learned advocate has relied upon the Hon'ble Apex Courts judgment in the case of ***Intercontinental Consultants and Technocrats Pvt. Ltd. [2018-TIOL-76 -SC]***

6. We have also heard learned DR who has vehemently opposed the arguments advance by the learned advocate and has contended that it is established case of evasion of Service Tax as the appellant have been manipulating the balance sheet by mis-declaring the taxable value in the ST 3 return and balance sheet. It has also been contended that Shri T C Rao, CMD of the appellant in his statement dated 17.9.2012 has categorically admitted that they have fabricated and forged the value of taxable service declared under ST 3 returns submitted by them with an intent to evade payment of service tax.

7. We have heard both the sides and have perused the record of appeal. We find that the present appeal has arisen against the confirmation of service tax of Rs. 65,96,430/- along with interest and penalties as leviable under Finance Act, 1994 on the ground that the appellant have evaded Service Tax by suppressing the taxable value in their ST 3 returns and taxable service namely, security agency service and manpower supply service.

8. The arguments taken by the appellant that they have been working as pure agent with regard to wages, salary, PF etc., on behalf of its clients and wages, salary, PF etc. collected by them from their clients have been passed on by them to the persons supplied by them to its clients and therefore, he is working as pure agent and therefore, he is covered by Hon'ble Apex Court decision in the case of ***Intercontinental Consultants and Technocrats Pvt Ltd. (supra)***. We

find that the above judgment of Hon'ble Apex Court is not relevant in their case and we are of the view that they are supposed to discharge their Service Tax liability on the gross amount received from their customers. The facts in this case, are fully covered by decision of this Tribunal in the case of ***Rajasthan Ex-Servicemen Ltd. vs. CCE, Jaipur I [2017 (52) STR 42 (Tri-Del)]*** which has also been confirmed by the Hon'ble Rajasthan High Court. The relevant extract of the same are reproduced hereinbelow:

> **"6. Regarding the liability of the appellant for Service Tax under the category of security agency, it is clear that the services rendered are squarely covered by the tax entry and we see no merits in the pleas of the appellant in this regard. The lower authority examined the issue in detail and we find no ground in the present appeal to interfere with the findings. Similarly, the appellants are covered for tax liability for the whole period of demand is clear from their legal status and financial accounts to the effect that they are, infact, involved in profitable commercial activity. It is clear from the bylaws of the society which clearly stipulates about net profit. We find no justification to hold the appellant as anything other than commercial entity. Similarly, the value for tax purpose has to be the gross amount received by the appellant from their clients is a well settled legal position in terms of Section 67 of the Finance Act, 1994. The Valuation in respect of 'security agency services' has been subject matter of many decisions of Tribunal and Hon'ble High Courts which are as under :**
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> 1. ***Security Agencies Association* v. *Union of India***

[2012 (28) S.T.R. 3 (Ker)];

2. ***Punjab Ex-Servicemen Corporation* v. *Union of India***
[2012 (25) S.T.R. 122 (P&H)];
3. ***New Industrial Security Force* v. *CCE, Kanpur*}**
[2006 (3) S.T.R. 197 (Tri.-Del.)];
4. ***Panther Detective Services* v. *CCE, Kanpur***
[2006 (4) S.T.R. 116 (Tri.-Del.)];
5. ***CCE, Pune II* v. *Commander Security Services***
[2015 (39) S.T.R. 494 (Tri.-Mum.)]

7. Accordingly, we find no merits in the pleas of the appellant."

9. We find that the appellants have not contested that the figures given in the balance sheet which they have submitted before the investigating agency are not factually correct. Rather, we find that it has been confessed by the CMD and other officials of the appellants that the figures given in ST 3 returns are manipulated and does not reflect the correct value of the services provided by them. We find that the appellant has mainly contested that their liability is to be determined on receipt basis and not on the basis of gross figures reflected in the balance sheet. On the question whether the service tax is correctly been calculated on receipt basis before 30.06.2011, we agree with the arguments advanced by learned advocate. However, this fact can only be checked at the level of original adjudicating authority and therefore, we are of the view that for the purpose of determining

the financial year wise receipt of Service tax value prior to 1.7.2011 and even upto 30.06.2011, the adjudicating authority need to examine the balance sheet and other statement of accounts to re-determine the financial year wise receipts as claimed by the learned advocate and to re-determine, the demand of service tax for particular financial year.

10. With regard to claim of appellant that cum-duty-benefit should have been provided to them, we find that this fact also needs to be rejected at the level of original adjudicating authority. As we findfrom the show cause notice that assessee have been collecting service tax on the value which is given by them on the invoices and which have been taken in the balance sheet However, since all the details are not available before us, we direct the adjudicating authority to examine the appellants claim in this regard.

11. As regards, the appellants claim that they have paid an excess service tax of Rs. 3,00,221/- in the ST-3 return for 2009-10, we do not find any reason why the same should not be adjusted against their demand for the years 2009-10 to 2011-12, if the same is correct. If the claim of the appellant is correct, the same should be appropriated and adjusted against their present demand.

12. We do not find any force in the arguments advanced by the learned advocate that the extended period proviso is not invokable in this particular case as they have been regularly filing ST 3 returns. We find that this is clear cut case of intentional evasion of service tax by

manipulating and forging the figures of the taxable value for levy of service tax by the appellant and therefore, we hold that the demand for extended time period is rightly invoked.

13. In view of the above, we hold as follows:

(i) We feel that order-in-original is legally correct in principal in confirming service tax under section 73(1) of Finance Act, 1994 as well as in imposing penalties under section 77 and 78 of Finance Act, 1994 on the appellant.

(ii) However, so far as the quantum of service tax is concerned, we feel that adjudicating authority to rework amount of service tax demanded by considering the submissions of appellant with regard to issue of cum duty value and also to examine the amount of taxable value by taking the receipt basis of service charges before 01.07.2011 and on the basis of actual accrual after 01.07.2011.

(iii) The appeal is accordingly decided with the direction to the adjudicating authority to undertake the denovo adjudication with regard to points as mentioned under (ii) above.

(order pronounced in the open Court on 05.12.2018)

(Rachna Gupta)
Member (Judicial)

(C L Mahar)
Member (Technical)

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