

IN THE CUSTOMS, EXCISE & SERVICE TAX  
APPELLATE TRIBUNAL,  
WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-SM

COURT – IV

**Service Tax Appeal No. ST/52546/2018 [SM]**

[Arising out of Order-in-Appeal No. 372-SM-ST-JPR-2018 dated 07/06/2018 passed by the Commissioner (Appeals), Central Excise & Central Goods and Service Tax, Jaipur-I]

**Jal Mahal Resorts Pvt. Ltd.** **...Appellant**  
**Vs.**  
**C.C.E. & S.T., Jaipur-I** **...Respondent**

Present for the Appellant : Mr. Sanjiv Agarwal, CA  
Present for the Respondent: Ms. Tamana Alam, DR

**Coram: HON'BLE MRS. RACHNA GUPTA, MEMBER (JUDICIAL)**

**Date of Hearing: 19.11.2018**  
**Pronounced on : 14.12.2018**

**FINAL ORDER NO. 53397 / 2018**

**PER: RACHNA GUPTA**

Appellant herein are holder of service tax registration as servicer receiver for legal consultancy services and others. Refund claim of service tax of Rs. 7,23,239/- was filed on 03.09.2015 for the financial year 2013-14 under Section 11B of Central Excise Act, 1944 (as made applicable to service tax vide Section 84 of Finance Act, 1994). The said claim was in relation to the legal consultancy service as the appellant under reverse charge mechanism had wrongly deposited being unaware of the exemption on the ground that taxable turnover of the appellant company was below Rs. 10 lakhs during the aforesaid period. While adjudicating the said SCN the Deputy Commissioner, Jaipur vide the Order No. 149 dated 26.02.2016 sanctioned the said refund observing that the appellant has fulfilled all the conditions of Notification No. 25/2012-ST dated 20.01.2012. Commissioner Central Excise, Jaipur vide Order in

review No. 04/2016 dated 07.06.2016 formed an opinion that Deputy Commissioner has erred in granting refund claim of service tax paid by the claimant on legal services under reverse charge mechanism holding that the Notification No. 25/2012 has wrongly been applied. It is thereafter that Department filed the Appeal before Commissioner(Appeals) who vide the Order No. 372 dated 07.06.2018 has rejected the said Order holding that the refund has wrongly been sanctioned. Being aggrieved the appellant is before this Tribunal.

2. I have heard Shri Sanjiv Agarwal, Ld. CA for the appellant and Ms. Tamana Alam, Ld. DR for the Department.

3. It is submitted on behalf of the appellant that the original adjudicating authority had rightly held that the appellant-claimant has received the legal services as business entity having turnover below to Rs. 10 lakhs in preceeding financial year than the one in question. Therefore, in view of Notification No. 25, appellants were not liable to pay the service tax on these services received by them. It is further submitted that Commissioner(Appeals) has wrongly explained the definition of turnover to include the nursery sales of the appellant and while doing so has formed a wrong opinion that the turnover of the appellant is more than Rs. 10 lakhs. It is submitted that the entire documents were made available to Commissioner(Appeals) showing that the taxable income of the appellant for the period in question was just Rs. 4,71,946/-. Commissioner(Appeals) has wrongly included the non taxable income of Rs. 31,22,404/- in the value of the turnover which is alleged to be wrong on the face of the record. The appellant has relied upon the decision of Supreme Court in the case **New Delhi**

**Bench Stainless Steel 2014 (307) E.L.T. 2014** to impress upon that turnover shall only include the activities in which the respondent is dealing in. In that case, the sale proceeds of steel scrap were denied to be included in the term turnover of the unit which was manufacturing and selling steel utensils. Alleging the Order under challenge as being passed in ignorance of relevant facts and wrong interpretation of definition turnover, the Order is prayed to be set aside. Appeal is prayed to be allowed.

4. While rebutting these arguments, Ld. DR has justified the Order. It is submitted that Commissioner(Appeals) has been elaborate enough to explain the exact meaning of turnover of a business entity with the ample clarity that turnover includes both goods sold and the services provided by the business entity. It is submitted that original adjudicating authority has committed an error while confining the turnover of the business entity to the amount of taxable income. Order is accordingly prayed to be confirmed. Appeal is prayed to be dismissed.

5. After hearing both the parties and observing the entire findings as well as the Orders of adjudication Authorities below, I am of the opinion as follows:

Appellant herein is a Private Limited Company. It initially got a project to develop a land adject to Mansagar Lake in Jaipur and a licence to restore and reuse of Jal Mahal monument both being the places of tourist attraction. However, the projects got stayed due to various litigations. Meanwhile the appellant continued carrying the activity of site restoration and development including the plantation activities. The plants developed were also sold to the citizens of Jaipur. In addition, the appellant was having earnings from machine

hire which though was for the purpose of project but due to aforesaid injunction Orders, it was used for other income generating purposes and the main income of the appellant is in the form of income from bank FDs and NSCs.

With this background, the appellant had applied for refund on service tax paid under reverse charge mechanism on the legal services opining that same was not payable in view of Notification No. 25 dated 20.01.2012. For adjudication of this issue, it is foremost, required to look into the impugned Notification which reads as follows:

**"6. Services provided by –**

- a) *An arbitral tribunal to –*
  - (i) *Any person other than a business entity; or*
  - (ii) *A business entity with a turnover up to rupees ten lakh in the preceding financial year;*
- b) **An individual as an advocate or a partnership firm of advocates by way of legal services to, -**
  - (i) *An advocate or partnership firm of advocates providing legal services;*
  - (ii) *Any person other than a business entity; or*
  - (iii) **A business entity with a turnover up to rupees ten lakh in the preceding financial year; or**
- c) *A person represented on an arbitral tribunal to an arbitral tribunal."*

Thus, for becoming entitled to the refund as the one in question, the appellant had to specify two conditions:

1. That it is a business entity
2. The turnover thereof is less than Rs. 10 lakhs in the preceding financial year

The financial year in the question is the year 2013-14. Business entity has been defined in the Finance Act, 1994 under Section 65(19)(b) thereof to include an association of persons, body of individuals, company or firm except an

individual. The appellant admittedly is a Private Limited Company hence qualifies the definition and thereby the first condition of the Notification.

6. Coming to the fulfilment of second condition, it is observed that term "turnover" has not been defined in either Finance Act, 1994 or in Central Excise Act, 1944. Though Commissioner(Appeals) has relied upon the definition of turnover as given in Section 2(91) of the Company Act, 2013 and that the said Act is not *per materia* to any of the above mentioned acts. The contentions of the appellant to that extent is acceptable that different statutes seek to achieve different objectives, due interpretation of expressions used in one statute with reference to other use in another statutes cannot be applied for, as has been settled by Supreme Court in the case State of Punjab Vs. Okara Grave Buyers AIR 1964 S.C. 669. But it is equally the settled law that the terms which have not been defined in a statute, the common and the general meaning thereof shall be attributed.

7. Coming to the dictionary meaning of turnover, various dictionaries define the same as follows:-

- (a) Oxford Dictionary – the amount of money taken by a business in a particular period.
- (b) Cambridge English Dictionary – the amount of business that a Company does in a period of time.

Thus, the sales turnover is the Company's total revenue both the invoice, cash payments and other revenues which represents the value of goods and services provided to the customers during a specified time period. Once this is the situation irrespective of business entity is involved into several other transactions of good as well as services, it is the total annual sales volume net of all discounts and sales/ service taxes which can be called as 'turnover'.

The general meaning of turnover is not restricting it to mean turnover of the taxable service. In the given circumstances, the opinion formed by original adjudicating authority while discarding the income from the nursery plant sale and the interest from bank FDs and NSCs holding the same as non taxable income is opined to be a wrong interpretation. As discussed above, neither the definition of business entity nor that of turnover creates a distinction between taxable and the non taxable income. Resultantly, the net aggregate thereof has to be taken while calculating the turnover of the business entity. The Commissioner(Appeals) is opined to be correct while holding that "the Notification does not uses the word business turnover instead has used the work business entity with turnover". Hence from the plain reading of Notification and understanding of word turnover it is clear that entire proceeds of business entity has to be considered. In my opinion, the findings of Commissioner (Appeals) have a legal as well as genuine basis. Also to my opinion the intention of legislature vide the impugned Notification is to exempt only the under-sized business entities i.e. whose turnover as appearing in their profit and loss account as a whole is less than Rs. 10 lakhs. Therefore, I hold that Commissioner(Appeals) has rightly rejected the claim. I find no infirmity in the Order under challenge. Appeal is therefore rejected.

[Pronounced in the open Court on 14.12.2018 ]

**(RACHNA GUPTA)**  
**MEMBER (JUDICIAL)**

D.J.