CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI.

PRINCIPAL BENCH - COURT NO. II

Service Tax Appeal No. 52206 of 2014-SM

(Arising out of order-in-appeal No. 08(VC)ST/JPR-I/2014 dated 24.02.2014 passed by the Commissioner (Appeals), Central Excise, Jaipur-I).

M/s MJR Steels (P) Limited **Appellant**
H-173, Sitapura Industrial Area, Jaipur.

VERSUS

Commissioner (Appeals) Central Excise & Service Tax, NCR Building **Respondent**
Statue Circle, C-Scheme, Jaipur.

APPEARANCE:

Ms. Priyanka Goel, Advocate for the appellant
Ms. Tamanna Alam, Authorised Representative for the respondent

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO. 50889/2019

DATE OF HEARING: 28.03.2019
DATE OF DECISION: 28.03.2019

ANIL CHOUDHARY:

The issue in this appeal is whether the appellant, a manufacturer of steel items having their Head Office and factory at Kolkata, having sent their finished goods from Kolkata to Jaipur Branch and have paid the service tax on GTA service at Kolkata, whether service tax can be again demanded at Jaipur.

2. The appellant is manufacturer at Kolkata and registered both under Central Excise and Service Tax Department at Kolkata. At Jaipur they are registered under Central Excise as a registered dealer. The appellant transfer their finished product from Kolkata to their Branch at Jaipur. The freight for such transportation is paid by the Head Office at Kolkata which also deposits the service tax as the receiver of service as

required under Rule 2(1)(d)(v) of Service Tax Rules, 1994. Show cause notice dated 26.07.2011 was issued for the period April, 2010 to September, 2010 by the Deputy Commissioner, Service Tax Division at Jaipur demanding service tax of Rs. 2,72,894/- including cess alleging that the appellant branch office is the service receiver and was liable to pay service tax on the GTA service received. The show cause notice in para 3 also takes note of the submission of the appellant in the course of enquiry, wherein they have stated that for the period under dispute they have paid the service tax on the freight paid at their Head Office at Kolkata. They also enclosed copy of ledger of the freight account and the service tax account maintained in the books of Head Office and also copy of ST-3 return for the relevant period filed with the Service Tax Department at Kolkata.

3. It appeared to Revenue that appellant was required to take Service Tax registration at Jaipur and also deposit the Service tax at Jaipur as the GTA service is received at Jaipur. Further, the claim of their deposit of service tax at Kolkata is not acceptable. Further, penalty was also proposed under Sections 76 and 77 of the Act. The show cause notice was adjudicated on contest and the proposed demand confirmed alongwith penalty under Sections 76 and 77 of the Act. Being aggrieved, the appellant preferred the appeal before Commissioner (Appeals) who vide impugned order dismissed the appeal on merits observing that the ledger copy submitted by the appellant do not tally with the figure shown in ST-3 return filed at Kolkata. The challan submitted for payment of tax at Kolkata, not having mentioned that the service tax was paid for Jaipur office.

4. Being aggrieved, the appellant filed appeal before this Tribunal.

5. Learned Counsel for the appellant urges that it is admitted fact that the factory of the appellant and Head Office is situated at Kolkata, were registered under Central Excise and Service Tax. Further, invoice for freight charges from Kolkata to Jaipur branch has been raised on Kolkata Head Office which has paid the freight charges. Thus, appellant have not contravened the provisions of Rule 2(1)(d)(v) of Service Tax Rules, 1994 which requires payment of service tax by the recipient of service where the recipient is factory or limited company under the Companies Act. Further, the appellant had categorically stated that the freight has been paid by Head office at Kolkata and the service tax have been paid at Kolkata and proper declaration made in ST-3 returns at Kolkata. The appellant also gave a detailed chart of the GTA service received by the Head office relating to Jaipur branch and relating to other places and demonstrated that proper service tax has been paid and shown in the return. These facts have not been found to be untrue and the same have been ignored on flimsy reason. The adjudicating authority have failed to call for a report from the jurisdictional Service Tax Department at Kolkata and arbitrarily confirmed the demand resulting in double taxation on the appellant, which is against the provisions of the scheme of the Act & the Rules read with Article 265 of the Constitution of India. Accordingly, she prays for allowing the appeal with consequential benefit.

6. Learned Departmental Representative has relied upon the impugned order.

7. Having considered the rival contentions, I find that Rule 6(1) of Service Tax Rule, 1994 provides for payment of service tax to the credit of Central Government by the 5th / 6th of the following months in which the service is deemed to be provided. Further, sub-rule (2) of Rule 6 provides that the assessee shall deposit the service tax liable to be paid by him with the bank designated by the CBEC for this purpose in form TR-6 or in any manner prescribed by the Board. Further, sub rule 6A provides where an amount of service tax payable have been self assessed under sub section (1) of section 70 of the Act but not paid either in full or part, the same, shall be recoverable alongwith interest in the manner prescribed.

8. In view of the aforementioned provision, I find that service tax being a central tax, though normally required to be deposited within the jurisdiction of the Commissionerate where the assessee is registered and the same has been deposited at the Head office at Kolkata which have paid the freight charges and accounted for the same, and have also deposited the service tax, which is in accordance with the scheme of the provisions of Service Tax Act and Rules. Thus, I find that the show cause notice is mis-conceived and not maintainable. Accordingly, I set aside the impugned order in appeal and allow the appeal. The appellant is entitled to consequential benefit, in accordance with law.

(Operative part of the order pronounced in open Court).

(Anil Choudhary)
Member (Judicial)

Pant