CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD

Division Bench
Court - I

Application No. ST/EH/30194/2018 in ST/731/2010
&
Appeal Nos. ST/1798/2010, ST/26324/2013, ST/332/2010, ST/348/2011, ST/3229/2012, ST/25172/2013 & ST/23397/2014

S.No	Appeal No.	Appellant(s)	Respondent(s)	Order-in-Original No.
1.	ST/731/2010	VPR Mining Infrastructure Pvt Ltd	CCCE & ST, Hyderabad-II	53/2009-ST dt.21.12.2009 passed by CCCE & ST, Hyderabad-II
2.	ST/1798/2010	-do-	-do-	27/2010-ST dt.04.05.2010 passed by CCCE & ST, Hyderabad-II
3.	ST/26324/2013	-do-	-do-	5/2013-Adjn. (ST) Commr. dt.31.01.2013 passed by CCCE & ST, Hyderabad-II
4.	ST/332/2010	PLR Projects Pvt Ltd	CCCE & ST, Hyderabad-II	47/2009-ST dt.21.11.2009 passed by CCCE & ST, Hyderabad-II
5.	ST/348/2011	-do-	-do-	29/2010-ST dt.04.05.2010 passed by CCCE & ST, Hyderabad-II
6.	ST/3229/2012	-do-	-do-	14/2012-ST dt.7.07.2012 passed by CCCE & ST, Hyderabad-II
7.	ST/25172/2013	GRN Constructions Pvt Ltd	CCCE & ST, Guntur	105/2012-ST dt.16.11.2012 passed by CCCE & ST, Guntur
8.	ST/23397/2014	-do-	-do-	GUN-EXCUS-000-COM-064/2014-15 ST dt.17.09.2014 passed by CCCE & ST, Guntur

Appearance

Shri K. Girish (CA), Representative for the Appellant(s). (S.No.1-3)

Shri V.S. Sudhir (CA) & Shri P. Venkat Prasad (CA), Representative for the Appellant(s). (S.No.4-8)

Shri Dass Thavanam, Superintendent/DR for the Respondent.

Coram:

HON'BLE Mr. M.V.Ravindran, MEMBER (JUDICIAL)

HON'BLE Mr. P. Venkata Subba Rao, MEMBER (TECHNICAL)

Date of Hearing: 10.07.2018
Date of Decision: 10.07.2018

FINAL ORDER No. A/30741-30748/2018

[Order per: Bench.]

1. This application for early hearing was filed by the appellant seeking early hearing on the grounds that the subject matter covered in their appeal is squarely covered by the judgment of the Hon'ble Supreme Court in Civil Appeal Nos. 1335-1358/2015 in the case of CCE Vs Bhayana Builders Pvt Ltd, etc. It is also asserted by the applicant that this decision of the Hon'ble Supreme Court has been followed in several orders by the Hon'ble Tribunal. On perusal of records, we find that the case is prima facie covered by the various judgments and decisions on similar issues. We also find that the appeals pertain to 2010 and are quite old. We, therefore, find this a fit case to be considered for early hearing. At this stage, we also examined the

subject matter of all the appeals listed above and found that all these cases can be decided on merits as well.

2. Heard both sides and perused the records.

3. The appellants herein are registered with the Service Tax Department for site formation, clearance and excavation services and have been engaged by M/s Singareni collieries Company Ltd (SCCL) for rendering services of blast hole drilling, controlled blasting with shock tube intiation, excavation, loading, transportation and dumping, etc., of overburden at various sites and have been discharging service tax on the value of these services. As per the terms of tender, the appellants were required to quote their rates for providing services excluding the value of diesel and explosives. These two items were provided by the SCCL at the respective project sites. If the appellants use these free items supplied by the Service Recipient economically as per the bench marks, they receive a bonus. Show cause notices were issued by the Revenue seeking to add the value of the materials supplied (explosives and diesel) free of cost by the service recipient at various sites and consumed/used by the appellants for rendering services and also the bonus payments received by them from SCCL to the value of taxable services rendered.

4. The Learned Counsel for the appellants submitted that in all these cases only two issues are to be decided with respect to the valuation of the services rendered by them.

(a) Whether the value of the free supply of materials viz., explosives and diesel by service recipient M/s SCCL has to be included for the purpose of reckoning the Service Tax payable; and

(b) Whether bonus which they receive from their service recipient for economically using the diesel and explosives at the end of providing services is liable to be included in the value of services rendered.

5. He asserted that the materials supplied free of charge by the service recipient could not be termed as gross amount charged by them for rendering services and hence, the value of diesel and explosives supplied for free by the recipient of site formation, clearance, excavation and demolition was not includable in the value of Service Tax u/s 67 of Finance Act. He relied on the judgment of the Hon'ble Supreme Court in the case of Intercontinental Consultants and Tehnocrats Pvt Ltd [2018 (10) GSTL (40) (SC)] in which the Hon'ble Apex Court has held as above. He argued that the above ratio squarely applied to their case and therefore they are not liable to pay Service Tax on this value. As far as the bonus which they receive for efficient use of diesel and explosives is concerned, this is not known to them at the time of providing the service. It is calculated subsequent to completion of service. It is in the form of a prize for using these resources (which were provided by the service recipient) efficiently and cannot be linked to the value of services rendered by them. He relied on the Order of the Tribunal-Bangalore in the case of AMR India Ltd [2016 (42) STR 329 (Tri.-Bang.)]. He also relied on the following case laws:

i. Thermax Instrumentation Ltd Vs Commissioner of C.Ex., Pune-I [2016 (42) STR 19 (Tri.-Mumbai)]
ii. SMS Infrastructure Ltd Vs Commissioner of C.Ex. & Cus., Nagpur [2017 (47) STR 17 (Tri.-Mumbai)]

6. The Learned Departmental Representative reiterated the arguments in the Order-in-Original and vehemently opposed the appeals and said that the value of the free goods supplied by the service recipient needs to be included in the value of services rendered for the purpose of computation of Service Tax. He also asserted that the amount paid by the service recipient for efficient use of diesel and explosives is also linked to the service and hence needs to be included in the gross amounts received by the service provided from the service recipient.

7. We have examined arguments on both sides and perused the records. It has been laid down by the Hon'ble Apex Court in the case of Bhayana Builders [2018 (10) GSTL 118 (SC)] that the value of free materials supplied by the service recipient cannot be included in the value for the purpose of reckoning Service Tax. Respectfully, we follow the ratio of this judgment. Moreover, in almost an identical case, in the case of Intercontinental Consultants and Technocrats (supra), it has been held by the Supreme Court that value of free diesel and explosives supplied by the service recipient cannot be included in the value of services rendered for the purpose of assessment of Service Tax under Section 67. As far as the issue of bonus received by the service provider for efficient use of diesel and explosives is concerned, this amount was not known at the time of provision of services. If the service provider uses these materials supplied free of cost by the service recipient economically as per fixed benchmarks, he gets an extra amount as prize money. This amount cannot be included as value of taxable services rendered under Section 67. In an identical case, CESTAT Bangalore in the case of AMR India Ltd (supra) held as above and we respectfully agree with the same. In view of these findings, we find that the

demands made in the show cause notices and confirmed in the Orders-in-Original do not survive. We therefore find that the Orders-in-Original are liable to be set aside and we do so.

8. The Appeals are allowed and the Orders-in-Original are set aside.

(Operative part of this Order was pronounced
on conclusion of hearing)

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

(M.V. RAVINDRAN)
MEMBER (JUDICIAL)

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