CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD
Division Bench
Court – I

Appeal No. ST/1815/2010
(Arising out of Orders-in-Original No. 27/2010 (RS), dated 13.05.2010 passed by CCE, C&ST, Visakhapatnam-I Commissionerate)

CCE & CC, Visakhapatnam ….. Appellant(s)

Vs.

NEHA CONSTRUCTIONS PVT. LTD ….. Respondent(s)

Appearance
Shri A.V.L.N. Chary, Superintendent/AR for the Appellant.

Shri D. Suresh Sastry, Chartered Accountant for the Respondent.

Coram:

Hon'ble Mr. M.V. RAVINDRAN, MEMBER (JUDICIAL)

Hon'ble Mr. P.V. SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: 27.09.2018
Date of Decision: 27.09.2018

FINAL ORDER No.A/31258/2018

[Order per: P.V. Subba Rao]

1. This appeal has been preferred by Revenue against Order-in-Original No. 27/2010 (RS), dated 13.05.2010, passed by the original authority dropping the proceedings initiated in the show cause notice.

2. Heard both sides and perused the records.

3. The facts of the case, in brief, are that the respondent herein were engaged in providing some services to M/s Rashtriya Ispat Nigam Limited (RINL) and JSW Steel Limited (JSWSL) and have been receiving payments for such services. During the manufacture of steel products in RINL and JSWSL, many varieties of scrap like steel scrap, maintenance scrap, reheated/defective bloom scrap, CI scrap, slag scrap etc. are generated. RINL and JSWSL awarded the work relating to scrap recovery processing and transportation to the appellant through work orders. The appellant has been carrying on this work. The show cause notice proposed to charge service tax on these services under the head "Business Support Service", which is defined as follows in Section 65(105)(zzzq) of Finance Act, 1994:

> *"business support service" is a service to any person by any other person in relation to support services of business or commerce, in any manner."*

4. Hence, it appeared to the authorities that the services rendered by the respondent amount to business support service on which they have not discharged the service tax liability. Therefore, the show cause notice proposed to recover service tax along with interest from the appellant. It also proposed to recover interest under section 75 and impose penalties under sections 76, 77 & 78 of the Finance Act, 1994. This show cause notice was issued by the Additional Director General of Directorate General of Central Excise Intelligence, Chennai. After following due process, the

original authority found that the nature of services rendered by the respondent herein cannot be termed as business support and no service tax can be levied on them. The relevant portions of the order are reproduced below:

vii) It has been noticed that the department was not consistent in its stand on classification and taxability , Investigations were conducted against other entities namely, M/s Manisha Construction (P) Limited, Visakhapatnam, M./s Ferro Scrap Nigam Limited, Bhilai Chattisgarh and M/s Ferro Scrap Nigam Limited , Bokaro Steel Plant Campus, Bokaro and show cause notices issued seeking to classify the activity under Business Auxiliary Service , The Ld. Advocate could produce the copies of the Orders in Appeal passed by The Commissioner (Appeal), Visakhapatnam and Bhubaneswar setting aside the departmental claim of classifying the said activity under BAS. The Order In Appeal No. 15/2009 (V-I) dated 25-02-09 was also accepted by the Committee of Commissioners. It is significant to note that the said OIA was passed in respect of the company functioning in the jurisdiction of this Commissionerate. Even the DGCEI conducted the investigation against M/s Ferro Scrap Nigam Limited for rendering the similar services at Bokaro Steel Plant and issued a show cause notice to that effect which was set aside by Additional Commissioner. The departmental premise was to treat these activities as production activities and accordingly chose to classify them under BAS. These cases did not stand to the scrutiny of law . The Orders in Appeal (copies of which were provided by the defence) clearly stated that these activities are outside the purview of service tax as the same do not constitute processing. When the issue failed, the DGCEI chose to classify the same under BSS which was a later levy.

viii) It is important to note that the definition given for BSS in the statute has to be understood to find out the coverage envisaged therefrom. There were eleven services given therein that were specifically covered which are evaluation of prospective customers, telemarketing, processing of purchase orders and fulfillment services, information and tracking of delivery schedules, managing distribution and logistics, customer relationship management services, accounting and processing of transactions, operational assistance for marketing, formulation of customer service and pricing policies, infrastructural support services and other transaction processing. The statutory definition was also qualified by an explanation which read as" For the purposes of this clause, the expression "infrastructural support services" includes providing office along with office utilities, lounge, reception with competent personnel to handle messages, secretarial services, internet and telecom facilities, pantry and security;". These eleven categories clearly do not cover the activity of scrap/slag retrieval being undertaken by NCPL. Even if a broader view is taken, the activities which were not specifically mentioned should be akin and near the activities mentioned therein. The defence contention that the activities undertaken by them do not fit into any of the categories and that those categories even remotely do not cover the activities of NCPL can not be brushed aside. It is very relevant that the Judgement of the Honorable Supreme Court in the case of Pardeep Agarbatti Vs State of Punjab 1997(96)ELT219(SC) referred to by the Ld. Advocate is understood in the proper perspective. Despite the fact that the said judgement was in relation to other tax law, the import is equally applicable for interpreting the Finance Act, 1994 which governs the levy and collection of Service Tax. Extending the same legal view , it is imperative that the activities should be performed in relation to Business or commerce which are close or near to the illustrative services mentioned therein to merit classification under BSS. It is needless to say the activities undertaken by NCPL within the factories of RINL and FSWSL even remotely do not bear any resemblance with the eleven illustrative service mentioned supra. The difference in the nature of activity undertaken by NCPL and those listed in the definition of Section 65(104c)ibid is like the one between chalk and cheese.

ix) The DGCEI simply concluded that these services are in relation to business /commerce since scrap and slag are saleable commodities. It did not elaborate the same and justify the classification adopted for this purpose. The observation made by DGCEI that NCPL was using huge machinery for doing these activities in the factories of RINL and JSWSL and that the contracts ran into Crores of rupees cannot change the nature of jobs undertaken. It is also noticed that DGCEI was sanguine that the activities rendered by NCPL merit classification under BSS because another entity FSNL were paying tax under that head. It is also noticed that while recording the Statement of Shri. Shiv Kumar Kanodia dated 9-3-2009, the DGCEI came to know that the proposed classification of BSS as regards the activities undertaken by NCPL was not accepted by Visakhapatnam Steel Project (RINL) and JSWSL. At the same time they were also aware that FSNL was discharging service tax under BSS on similar activities. Under these circumstances, DGCEI could have got the matter clarified from the so called service recipients, namely, RINL and JSWSL as to why they were adopting different yardsticks for the same type of activities. But the said exercise was not undertaken.

x) It is common knowledge that the activities should be taxable in the first place as per the definitions accorded to them in the statute. Just because another entity(FSNL in the instant case) adopted this classification and were paying duty, the same can not be the ground for the department to impose the same view on all (including NCPL) and to demand tax which is otherwise not payable. Even if the view that in a few instances the retrieved scrap was sold by RINL/JSWSL without any further activity and thus the services are to be treated as BSS, it is noticed that no break up in relation to saleable portion of the scrap in the work orders mentioned was indicated by the investigating agency.

xi) In view of the foregoing, I am convinced that the activities undertaken by NCPL against the work orders placed by RINL and JSWSL do not get covered under the BSS to be levied to Service tax under Section 66 of the Finance Act, 1994.

5. She, therefore, dropped all proceedings in the Show Cause Notice. Hence this appeal by the Revenue on the following grounds:

a) A plain reading of the work order executed shows that the assessee was providing services such as collection, segregation, cleaning, magnetic separation, cutting, loading, transportation, dozing, cooling, stocking, screening etc. of scraps. They were using heavy machinery to carry out these activities alongwith skilled and semi skilled labour.

b) Thus, by these methods, the respondent herein had assisted their customers through cost effective methods to sell their scrap and therefore these operations fall under the category of business support services.

c) The demand is therefore sustainable alongwith interest and so are the interest and penalties.

In their cross objection, the respondent herein supported the impugned order and argued that the activities undertaken by them cannot be called as business support services within the meaning of the term under service tax act.

6. We have considered the arguments on both sides and perused the records. The activity undertaken by the respondent herein is removal of scrap and slag generated during the manufacturing premises of the steel manufacturers i.e. RINL and JSWSL. It is evident from the Order-in-Original that on similar issue in the case of M/s Ferro Scrap Nigam Limited for the services rendered to Bokaro Steel Plant, a show cause notice was issued seeking to classify them as "business auxiliary service" which has not been upheld during the adjudication proceedings. When this failed, DGCEI sought to classify the same under business support service which was a later thought. It has been rightly observed that the Commissioner in the impugned order that 11 services were specifically covered in the business support service viz: evaluation of prospective customers, telemarketing, processing of purchase orders and fulfilment services, information and tracking of delivery schedules, managing distribution and logistics, customer relationship management services, accounting and processing of transactions, operational assistance for marketing, formulation of customer service and pricing policies, infrastructural support services and other transaction processing. The term "infrastructural support services" was explained as providing office utilities, lounge,

reception with competent personnel to handle messages, secretarial services, internet and telecom facilities, pantry and security". The original authority has rightly observed that the activities undertaken by the respondent herein do not fall in the category of the services mentioned in the business support service or closely associated with them. Therefore, we find no infirmity in the impugned order. In conclusion, we find that the appeal is liable to be rejected and the impugned order upheld and we do so.

7. Impugned order is upheld and appeal is rejected.

(Operative portion of the order pronounced in open court on conclusion of hearing)

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

(M.V. RAVINDRAN)
MEMBER (JUDICIAL)

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