

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

Division Bench
Court - I

APPEAL No. ST/251/2010

(Arising out of Order-in-Appeal No. 75/2009 (H-II) ST, dated 30.10.2009 passed by CCCE&ST, Hyderabad)

CSS TECHNERGY LIMITED	..	APPELLANT
Vs.		
CCE, C&ST, Hyderabad-II	..	RESPONDENT

Appearance

Shri Karan Talwar, Advocate for the Appellant.

Shri P.S. Reddy, Asst. Commissioner/AR for the Respondent.

Coram:

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

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

Date of Hearing: 26.09.2018

Date of Decision: 26.09.2018

FINAL ORDER No.A/31260/2018

[Order per: Mr. M.V. Ravindran]

1. This appeal is directed against Order-in-Appeal No. 75/2009 (H-II) ST, dated 30.10.2009.

2. The relevant facts that arise for consideration after filtering out unnecessary details are during the period 01.07.2003 to 31.10.2005,

appellant was engaged in an activity of spot billing of electricity consumption charges and maintenance of customers' accounts for Andhra Pradesh Central Power Distribution Company Limited (APCPDCL). Revenue authorities were of the view that the amounts received in consideration for rendering these services by the appellant are taxable under the category of business auxiliary service. Coming to such a conclusion, a show cause notice dated 27.02.2006 was issued and appellant contested the show cause notice on merits arguing that the activity of spot billing and maintenance of accounts would not fall under the category of business auxiliary service and raised various other issues. The adjudicating authority, after due process of law, confirmed the demands raised alongwith interest and imposed penalties. Aggrieved by such an order, an appeal was preferred before the first appellate authority and the first appellate authority after recording the submissions of the appellant upheld the Order-in-Original. Hence this appeal.

3. Ld. Counsel submits that the issue is no more *res-integra* and is decided by the Bench in the case of Karvy & Co., Sneha Consultants Pvt. LTd. vs. CCE, C&ST, Hyderabad-II [2017(10) TMI 26 (Tri.-Hyderabad)], following the judgment of Hon'ble High Court of Telangana & Andhra Pradesh in the case of Phoenix IT Solutions at 2014(35)STR 314. It is his submission that this judgment of Hon'ble High Court is directed on the point which is not challenged. It is also his submission that during the pendency

of the proceedings appellant was compensated by APCPDCL by an amount of Rs. 16,10,333/- which was paid to the Government Treasury.

4. Ld. DR reiterated the findings of the lower authorities.

5. On careful consideration of the submissions made, we find that the facts are in large and the entire payment is received on the amount received as consideration for spot billing and maintenance of accounts by the appellant under an agreement with APCPDCL.

6. We do find that Ld. Counsel submission as to the issues covered by the judgment in the case of Karvy & Co., Sneha Consultants Pvt. LTd. (supra) is correct. We reproduce the order of Hon'ble High Court of Telangana & Andhra Pradesh in the case of Phoenix IT Solutions (supra).

“ [Judgment per : Goda Raghuram, J.]. - Heard Sri A. Rajashekar Reddy, the learned Standing Counsel for the appellant-Revenue the Commissioner of Central Excise and Customs.

2. The appeal is preferred under Section 35G of the Central Excise Act, 1944 against the order dated 18-1-2011 of the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Bangalore (for short 'the CESTAT') in CESTAT Appeal No. ST/491/2008 being Final Order No. 28 of 2011 [[2011 \(22\) S.T.R. 400](#) (Tri.-Bang.)].

3. The respondent-assessee is engaged in providing various services to electricity companies and electricity departments including M/s. Andhra Pradesh Electricity and Power Distribution Company Limited (APEPDCL) of Srikakulam, Vizianagaram, Visakhapatnam, Rajamundry, Kakinada, Eluru,

Narsapuram and Bhimavaram and has entered into an agreement with the APEPDCL, Visakhapatnam, inter alia, for spot billing, maintaining accounts and Software development and implementation and maintenance. Similar agreements with electricity Departments of the Govt. of Orissa were entered into by the respondent-assessee.

4. On a perception that the appellant was engaged in providing services under the category of Business Auxiliary Services (BAS) without obtaining Registration with the Department for payment of Service Tax and was not discharging their Service Tax liability, a show cause notice dated 5-6-2007 was issued demanding Service Tax of Rs. 74,28,063/- under the proviso to Section 73(1) of the Finance Act, 1994, along with interest under Section 75 and proposing penalties under Sections 76, 77 and 78 of the Finance Act, 1994. Eventually by the order dated 9-6-2008 the Commissioner confirmed the demand along with interest and imposed penalty. Aggrieved, the respondent-assessee preferred an appeal before the CESTAT.

5. By the order impugned, the Tribunal held inter alia that the billing and accounting work executed by the assessee is taxable under "Support Service of Business or Commerce" and not as BAS. In Para 17 of its order, the Tribunal held that the agreement between the assessee and Northern Orissa for spot billing activity also has a similar provision as the agreement with the Electricity Distribution Companies in Andhra Pradesh; that in all these cases billing and accounting is not done on behalf of electricity companies/departments but is for them; there is no interaction/communication with the customers; meter readings are required to be provided by the electricity department and these are to be entered into computer and data generated. The Tribunal reasoned that according to the definition 'Support Service of Business or Commerce [defined in Section 65(104c) of the Finance Act, 1994], service provided in relation to the business or commerce, including accounting and processing of transaction is covered. The Tribunal concluded on analysis of the agreements between the respondent-assessee and the Distribution Companies that billing is a transaction and when the meter reading is provided, the meter reading is entered and the bills are generated and that activity is correctly classifiable under the SSBC.

6. Section 65(104c) of the Finance Act, 1994 defines "Support Service of business or commerce" to mean services provided in relation to business or

commerce including inter alia accounting and processing of transactions, infrastructural support services and other transaction processing. In view of the definition of the expression 'Support Service of business or commerce' under Section 65(104c) of the Act, we are satisfied that the interpretation of the provision and application of the said provision to the transactions of the respondent-assessee is a fair view of the provision and calls for no interference. Section 65(104c) of the Act has been brought within the Service Tax net as "Support Service of business or commerce", by the Finance Act, 2006 with effect from 1-5-2006. The transaction in question relates to the period 1-7-2003 to 30-9-2006. In the circumstances the Tribunal has rightly held that these transactions of the respondent-assessee, since they fall within support service of business or commerce are not liable to the charge of Service Tax for the period anterior to the incorporation of clause (104c) in Section 65 of the Finance Act, 1994 i.e., prior to 1-5-2006.

7. On the analysis above, no question of law falls for consideration in this appeal and it is accordingly dismissed at the stage of admission."

7. We find nothing survives in the impugned order in this appeal, as similar issue is now decided by Hon'ble High Court. In view of the foregoing, impugned order is set aside and appeal is allowed.

(Dictated and pronounced in open Court)

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

(M.V. RAVINDRAN)
MEMBER (JUDICIAL)