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

Division Bench
Court - I

Appeal No.	Appellant(s)	Respondent(s)	Impugned Order-in-Original No
ST/323/2009	B. Girijapathi Reddy & Company	CCCE & ST, Guntur	12/2008-ST dated 31.12.2008 passed by CCCE & ST, Guntur
ST/742/2009			11/2009-ST dated 29.05.2009 passed by CCCE & ST, Guntur

Appearance:
Ms. Swetha & Shri G. Prahlad, Advocates for the Appellant.
Shri B. Guna Ranjan, Superintendent/AR for the Respondent.

Coram:
HON'BLE Mr. M.V.Ravindran, MEMBER (JUDICIAL)
HON'BLE Mr. P. Venkata Subba Rao, MEMBER (TECHNICAL)

Date of Hearing: 29.10.2018
Date of Decision: 29.10.2018

FINAL ORDER No. A/31408-31409/2018

[Order per: P.V. Subba Rao.]

1. These appeals are filed against Orders-in-Original Nos. 12/2008-ST dated 31.12.2008 & 11/2009-ST dated 29.05.2009.

2. The appellant herein is a partnership firm engaged in removal of overburden for M/s Singareni Collieries Company Ltd (SCCL) and they have entered into an agreement with them. As per the agreement the payment made by SCCL included all taxes. The appellant was registered with the service tax department and has been paying service tax. While determining the amount of service tax liability, the appellant considered the amount received from SCCL as cum-duty amount and paid tax thereon. Thereafter the appellant re-negotiated with SCCL and asked for reimbursement of service tax paid by them. It was agreed that 90% of service tax discharged by them will be reimbursed by SCCL. In other words, the appellant has received more than the amount initially

agreed. They have not discharged service tax on the full amount which they have received from SCCL. Show cause notices were issued to the appellant alleging that they have failed to pay service tax on additional amount which they have received from SCCL and have contravened the provisions of Sec.66 of Finance Act, 1994 read with Rule 6 of Service Tax Rules. It was also proposed to impose penalties under Sec.76 & 78. After following due process, the Commissioner of Customs confirmed the demand and imposed penalties as proposed. The present appeals are against the impugned orders on the following grounds.

(i) Reimbursement of service tax by service recipient cannot be considered as additional consideration.

(ii) They have no malafide intention to evade service tax liability and therefore extended period of demand cannot be invoked and no penalty and interest can be imposed on them.

3. Learned counsel for the appellant relied on the judgment of Hon'ble Apex Court in the case of Intercontinental Consultants & Technocrats Pvt Ltd [2018 (10) GSTL 401 (SC)] and argued that it is settled position of law that reimbursements are not subject to service tax.

4. Learned departmental representative reiterates the Order-in-Original and submits that as per the original agreement, the appellant is supposed to pay service tax out of the amount paid by SCCL and therefore the amount paid by them was taken as cum-duty amount. Accordingly, service tax was calculated. Meanwhile, the appellant was negotiating with SCCL who have agreed to reimburse the service tax. This fact was not disclosed to the department. In fact, when SCCL agreed to reimburse the service tax, the appellant should have paid the duty on the full amount without taking the amount as cum-duty receipt. He would argue that this is not in the nature of reimbursement of expense incurred while providing service but it is part of the payment towards

service and service tax. When the appellant paid duty calculating the amount received as cum-tax amount, he has not taken full amount received from the SCCL. Therefore, there was a clear evasion of duty by suppression of fact that they were in fact getting reimbursement of service tax and also by mis-declaring the amount they received from SCCL. Therefore, the demand was correctly confirmed and the penalties were rightly imposed.

5. We have considered the arguments on both sides and perused the records. As per Chapter V of the Finance Act, 1994, the service tax has to be levied on the gross amount charged for the service. Wherever the gross amount charged includes service tax, the amount so charged is taken as cum-tax amount and the tax is calculated backwards. In this case, the amount received by the appellant was much higher than what they have disclosed to the department as a result of their re-negotiation with their clients and hence the differential duty arose. In these facts and circumstances, the amount received by them cannot be equated with the reimbursable expenses incurred while rendering service which were not found exigible in the case of Intercontinental Consultants & Technocrats Pvt Ltd (supra) by the Hon'ble Apex Court. It is also evident that appellant has not disclosed the facts of their re-negotiation with their client and that they are getting over and above the amount initially agreed upon. Therefore, there was clear suppression of fact with intent to evade duty. Under these circumstances, we find no reason to interfere with the impugned orders.

6. Appeals are rejected and impugned orders are upheld.

(Operative part of this order was pronounced in the Open Court
on conclusion of hearing)

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

(M.V. RAVINDRAN)
MEMBER (JUDICIAL)

Veda