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

Division Bench - Court – I

SERVICE TAX APPEAL No. 296 of 2011

(Arising out of Order-in-Original No. 88/2010 (H-II)S.T, dated 22.10.2010 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals-II), Hyderabad)

Taher Ali Industries & Projects Pvt. Ltd. .. **APPELLANT**
#1-11-251-4B, 6th Floor,
Tirumala Heights,
Behind Shoppers Stop, Begumpet,
HYDERABAD – 500 016.
Telangana

Vs.

Commissioner of Central Excise, Customs & Service Tax, Hyderabad-II, .. **RESPONDENT**
L.B. Stadium Road, Basheerbagh,
HYDERABAD – 500 004.
Telangana

APPEARANCE:
Shri Sayed Tausif, General Manager for the appellant.
Shri Mir Anwar Mohiuddin, Asst. Commissioner/AR for the respondent

CORAM: HON'BLE Mr. ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE Mr. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER No.A/30442/2020

DATE OF HEARING: 13.02.2020
DATE OF DECISION: 13.02.2020

[ORDER PER: MR. ASHOK JINDAL)

1. This appeal has been filed against the impugned order wherein the demand has been confirmed on the activity of transportation of pipes by road from their factory to site.

2. The facts of the case are that the appellant is a manufacturer of pipes and had undertaken the activity of laying of pipes at the customer site. For transportation of pipes from their factory to the customer site, the appellant availed transportation services during the period October 2007 to September 2008 but did not pay service tax thereon. Therefore, a show cause notice was issued to the appellant to demand service tax under reverse charge mechanism on the transportation services received by the appellant. The matter was adjudicated and the demand of service tax was confirmed along with interest and penalties were also imposed. Against the said order, the appellant is before this Bench.

3. Shri Sayed Tausif, General Manger of the appellant firm appeared and submits that the appellant is engaged in the activity of "Works Contract" and as per the agreement they were required to carry the pipes from their factory to the customer site and lay the pipes on which they are paying VAT. On the valuation of transportation also they are paying VAT. Therefore, they are not liable to pay service tax. Alternatively, he submits that if they were required to pay service tax, they would be entitled to avail CENVAT Credit. Therefore, this is a revenue neutrality and therefore proceedings are not sustainable.

4. On the other hand, Ld. AR submits that it is an admitted fact that the appellant received services of transport agency for transportation of pipes from their factory to the customer site and in terms of Rule 2(1)(d)(v) of Service Tax Rules, the appellant is liable to pay service tax under reverse charge mechanism on the transportation charges received by them.

5. Heard both sides and considered the submissions.

6. On consideration of submissions, we find that it is no doubt that the appellant is executing works contract but during their activity, they are receiving services of transportation and in terms of Rule 2(1)(d)(v) of Service Tax Rules, they are required to pay service tax being a service recipient of transportation under reverse charge mechanism. Therefore, we hold that the appellants are liable to pay service tax along with interest.

7. Considering the facts of the case that the appellant is entitled to avail CENVAT Credit thereon, therefore, by invoking Section 80 of the Finance Act, 1994, we set aside the penalty imposed on the appellant. The appellant is at liberty to avail CENVAT Credit of service tax paid being service recipient on the transportation service.

8. The appeal is disposed of in the above terms.

(Dictated and pronounced in open court)

(ASHOK JINDAL)
(MEMBER (JUDICIAL)

(P. VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

vrg