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

Division Bench

Court – I

Service Tax Appeal No. 401 of 2008

(Arising out of Order-in-Original No.05/2008 dt.27.03.2008 passed by CCCE & ST, Hyderabad - IV)

National Remote Sensing Agency
Balanagar, Hyderabad,
Telangana – 500 037 **......Appellant**

VERSUS

Commissioner of Customs, Central Excise & Service Tax, Hyderabad - IV
Posnett Bhawan, Tilak Road, Ramkoti,
Hyderabad, Telangana – 500 001 **......Respondent**

and

Service Tax Appeal No. 402 of 2008

(Arising out of Order-in-Original No.05/2008 dt.27.03.2008 passed by CCCE & ST, Hyderabad - IV)

Commissioner of Customs, Central Excise & Service Tax, Hyderabad - IV
Posnett Bhawan, Tilak Road, Ramkoti,
Hyderabad, Telangana – 500 001 **......Appellant**

VERSUS

National Remote Sensing Agency
Balanagar, Hyderabad,
Telangana – 500 037 **......Respondent**

Appearance
Shri M. Taraka Srinivas, Advocate for the Assessee.
Shri P.R.V. Ramanan, Authorized Representative for the Revenue.

Coram:
HON'BLE MR. P. VENKATA SUBBA RAO, MEMBER (TECHNICAL)
HON'BLE MS. RACHNA GUPTA, MEMBER (JUDICIAL)

FINAL ORDER No. A/30898-30899/2020

Date of Hearing: 21.11.2019
Date of Decision: 24.06.2020

[Order per: P.V. SUBBA RAO]

1. These two appeals are filed by the assessee and the revenue against the same impugned order and hence are being disposed of together.

2. Heard both sides and perused the records.

3. The facts of the case in brief are that M/s National Remote Sensing Centre (NRSC), Balanagar, Hyderabad is an autonomous body under the Department of Space Research, Government of India. The department informed NRSC that their activities related to photography services, scientific or technical consultancy service and commercial training and coaching services, etc., are taxable services and therefore, they are liable for payment of tax. Accordingly, the assessee applied for and obtained registration to the service tax department under the heads "Photography service", "Scientific and Technical Consultancy service" and "Commercial Training & Coaching service". Records and data were obtained from the appellant by the department and statements of Shri Janardhan Rao, Head of Accounts & Financial department of NRSC, were recorded. After investigating the nature of their activities a show cause notice was issued to the appellant covering period 16.06.2005 to 31.02.2005 invoking extended period of limitation on 23.10.2006. In this SCN, NRSC was called upon to explain why an amount of Rs.19,89,66,570/- should not be demanded from them as service tax on photography services and scientific and technical consultancy services rendered by them. Education Cess amounting to Rs.24,24,689/- was also demanded from them. Interest was also proposed to be demanded on the aforesaid amounts and some amounts of tax and interest already paid by them were proposed to be appropriated against the aforesaid demands. It was also proposed to impose penalties under section 76, 77 & 78 of the Finance Act, 1994 upon the appellant.

4. After following due process, the learned adjudicating authority, by the impugned order, confirmed the demands on photography services and scientific and technical consultancy services along with interest and appropriated the amounts already paid by them towards these demands. He also imposed penalties under section 76, 77 & 78 of the Finance Act, 1994. However, he dropped the demand to the extent of Rs.73,53,987/- towards

service tax and Rs.1,18,369/- towards Education Cess in respect of the consultancy projects undertaken by the appellant for other autonomous organisations within the same department treating the same as in-house projects.

5. Revenue is aggrieved by the Adjudicating authority dropping the demands in respect of the projects under which services were rendered by the appellant to other organisations under the same department, such as ISRO, RRSC, treating them as in-house projects. It is the case of the revenue that just like NRSC both ISRO and RRSC have separate legal existence as evidenced from the statements of financial advisor of NRSC, Shri Janardhana Rao. Their annual reports are separate. They fall under the definition of 'client' and NRSC has received consideration for the taxable services rendered from the clients. These projects, therefore, cannot be considered as in-house projects. Service tax, therefore, needs to be confirmed even on such amounts, according to the revenue.

6. On the other hand, the assessee is aggrieved by the entire confirmation of the demand itself. Learned counsel for the assessee contested the demands both on merits and on limitation. He also contested the imposition of penalties upon the assessee. On the date of hearing i.e., 21.11.2019, learned counsel for the assessee was requested to provide sample copies of the project reports which they have prepared and supplied to their clients within a month. On 27.01.2020, learned counsel has submitted a note along with the copies of some documents but none of the project reports were submitted. The documents that he submitted were only copies of sanction orders issued by various Ministries to their clients copies of which have also been marked to the appellant. Therefore, we proceed to decide the issues on merits based on the records which are available and submissions made by both sides. Learned counsel for the assessee submits that they are a society registered under Societies Registration Act, 1860, created as per a resolution passed by the Union Cabinet. They initially started functioning under the administrative control of department of science and technology and were subsequently brought under the control of department of space. He submits that they are an autonomous body under the department of space. Subsequently, w.e.f. 01.09.2008, NRSA has been

converted into National Research Space Center, a center under the department of Space/ISRO. They conduct aerial surveys and digital mapping surveys. The services which were rendered by them were classified by the revenue as (i) Photography services and (ii) Scientific & Technical Consultancy services. It is his assertion that the services which they have rendered are in the nature of "survey and map making services" covered by section 65(104)(b) and section 65(105)(zzzc) of the Finance Act, 1994 and not under Photography services and Scientific & Technical Consultancy services. He would submit that while the nature of their service is survey and map making, if such services are provided by an agency under the control or authorized by the Government in relation to survey and map making, they get excluded from the taxability by virtue of section 65(105)(zzzc). Section 65(104)(b) and Section 65(105)(zzzc) of the Finance Act, 1994 are reproduced as below:

> *"**65(104)(b)** – 'Survey and map-making' means geological, geophysical or any other prospecting, surface, sub-surface or aerial surveying or map-making of any kind, but does not include survey and exploration of mineral."*
>
> *"**65(105)(zzzc)** – to any person, by any other person, **other than by an agency under the control of, or authorised by, the Government**, in relation to survey and map-making."*

7. It is his assertion that survey and map making services were brought under the tax net w.e.f. 2005-06 and the scope of these services and the taxability were explained by TRU in its Letter No.B1/6/2005-TRU dt.27.07.2005 as follows:

> *"8.2 This service covers geological, geophysical, geochemical and other prospecting services by studying the properties of the earth and rock formation and structures. It also includes services providing information on sub-surface earth formations by different methods such as seismographic, gravimetric, magnetometric methods or other sub-surface surveying methods.*
>
> *8.3 Further, it covers surface surveying, services of gathering information on the shape, position or boundaries of a portion of earth's surface by methods such as transit, photogrammetric, or hydrographic, for the purpose of preparing maps. It also includes surveying or collection of data by satellites.*
>
> *8.5 Map making consists of preparation or revision of maps of all kinds such as topographic, hydrographic, roads, planimetric, cadastral, city maps etc. using various information sources.*
>
> ***8.6 However, survey and map-making services rendered by an agency under the control of the Government or authorised by the Government, such as 'Survey of India' are specifically excluded and are outside the scope of this service.**"*

8. He would submit that the case of the revenue is that the services rendered by them fall under the definition of 'Photography service' under section 65(78) & 'Scientific and technical consultancy service' under section 65(92) of the Finance Act, 1994. These read as follows:

> *"**Section 65(78)** – '**Photography**' includes still photography, motion picture photography, laser photography, aerial photography and fluorescent photography."*
>
> *"**Section 65(92)** – '**scientific or technical consultancy**' means any advice, consultancy or scientific or technical assistance rendered in any manner, either directly or indirectly, by a scientist or a technocrat or any science or technology institution or organization, to any person, in one or more disciplines of science or technology."*

9. With respect to the demand under the head photography service, he would submit that they are undertaking different projects for clients. It is the case of the department that they undertake projects in which aerial survey or mapping is done and aerial photography is within the scope of the terms 'photography'. Accordingly, the demand on this ground has been confirmed. With respect to demand under scientific and technical consultancy services, he submits that these pertain to activities which involve photography, conducting surveys and preparation of reports. Learned counsel for the assessee would submit that the nature of their work would squarely fall under the definition of 'survey and map making services' and therefore, the same cannot be called as 'scientific and technical consultancy service'. Therefore, he would submit that the demand on both accounts must be dropped.

10. He would further submit that National Remote Sensing Agency (NRSA) has now been converted into a Government entity called as NRSC under the department of Space and therefore, the Government of India would be remitting tax as NRSC from Consolidated Fund of India and receiving the same as CBIC into the Consolidated Fund of India in case of an adverse decision of the Tribunal. Thus, it will be a case Government paying to itself.

11. With respect to the invocation of extended period of limitation, he would submit that there was no evidence of fraud or suppression of facts or wilful intention to evade tax as the organisation is run by the Government officials who would not benefit in any way if the organisation evades taxes. Therefore, for this reason, the extended period of limitation cannot be

invoked. He relies on the Hon'ble Apex Court's decision in the case of CCE vs Chemphar Drugs & Liniments [1989 (40) ELT 276 (SC)]. He would further assert that the bonafide of the assessee is apparent. Therefore, extended period of limitation cannot be invoked. He would, therefore, urge that the revenue's appeal may be rejected and their appeal may be allowed with consequential relief.

12. Learned special counsel for the revenue, on the other hand, takes us through the facts of the case and explains that NRSA is an autonomous body under the Government of India and has been rendering certain services to the Government departments, Public Sector Undertakings, Private Sector Undertakings and other organisations on payment of fees and charges. The SCN has been issued under the heads photography services and scientific and technical consultancy services covering the period 16.07.2001 to 31.12.2005. Demands have also been made for the period 16.06.2005 to 31.12.2005 on the advances received against these services. The assessee is in appeal against the confirmation of demand to the extent of Rs.19.39 Crores by the Commissioner along with interest and imposition of penalties while revenue is in appeal against the dropping of demand of Rs.74.72 lakhs in respect of consultancy projects undertaken by the assessee for other autonomous organisations under the same department. It is not in dispute that they have been paid for these services also.

13. As far as the demand on photography services is concerned, he would submit that "photography" has been defined under Chapter V of the Finance Act, 1994 and it includes aerial photography in particular. The Photography division of NRSA (now NRSC) is concerned with processing of aerial films, general photography and data acquisition; aerial division is concerned with aerial photography by low level flying aircrafts specially designed for the purpose. They have rendered these services to other organisations including Government organisations and they charged amounts for these services. They received payments/fees for the projects undertaken by them and none of these were rendered as a social obligation or for some general good or for charitable purposes. These services have been rendered in their capacity as a commercial concern or agency. The term "commercial concern" in the photography services has been replaced by the term "person" w.e.f.

07.06.2005. Even after such amendment, these services do fall under the head of photography services. Therefore, the demand of photography services is correctly confirmed.

14. As far as the demand on scientific and technical consultancy services is concerned, it is on the amounts received under the following projects:

(A) Projects completed under Grants in Aid received from other Government departments: In these cases, it is the case of the assessee that the activities have been undertaken by them under Grants-in-Aid which is misleading. The grants have been given to the various Government departments and organisations and they, in turn, hired the appellant to carryout part of their work. After completing the work, they prepare a report and submit it which is in the nature of rendering technical assistance and advice. The details of these projects are as follows:

a. Land use/ Land cover mapping
b. Mapping of ground water prospective zones
c. Forest type and density mapping
d. Wasteland mapping and monitoring
e. Mapping of natural resources on watershed basis
f. Identification and area estimation of major crops
g. Mapping vegetation condition
h. Periodic inventory of snow cover
i. Geological and geomorphological mapping
j. Generating information on major natural disasters

These would show that expertise of highly technical nature is required for rendering the services including preparing reports and it does not involve mere retrieval of raw data from the archives and supplying the same to the user departments. These being highly technical subjects, mere provision of data would not help the clients, who, do not have the expertise. Therefore, the nature of these services rendered by the appellant is definitely "scientific and technical consultancy" and is not merely making maps.

(B) National Agricultural Technology Projects (NATP): These projects were executed by NRSC rendering technical consultancy services to the client NATP. NRSC claimed exemption under Notification 16/2002 dt.02.08.2002 which was applicable only to services rendered to international organisations and in this case no service was rendered to an international organisation. Only the project was funded by the World Bank. Therefore, learned Commissioner had correctly rejected the claim of NRSC.

(C) IIRS Projects: These projects are undertaken not by the appellant but by M/s IIRS which is a division of NRSC and whose income from these services is accounted for in the books of NRSC as income. Therefore, the appellant is liable to pay service tax on this income.

(D) Research Projects: Research projects were executed for Indian Council of Agricultural Research (ICAR) for standardization of methodology for large-scale soil mapping data. The assessee's contention is that these were mere research projects. However, the services which were rendered were not merely sharing of data/information but involved evolving standardized methodology and delivering detailed study of the existing methods, availability of data, organisation of systematic requirements arriving at an optimal solution and making recommendations. Thus, it was in the nature of technical consultancy for ICAR, who paid for the services rendered by the appellant.

(E) System Projects for Defence: These services relate to services rendered in respect of earth station at Delhi for which the appellant received payments from the Ministry of Defence and accounted for it under the head 'consultancy' projects. These are also in the nature of scientific and technical consultancy services.

(F) Consultancy projects to ISRO/RRSC: The assessee's contention is that these were "in-house projects" which contention has been accepted by the learned Commissioner in the impugned order. It is the contention of the learned special counsel that the appellant is a different legal entity and ISRO and RRSC are different legal entities and it is for this reason, they have been paid amounts for rendering services. Therefore, they cannot be considered as part of the same organisation and the services rendered cannot be considered as self-service.

(G) Data dissemination and Photo products project: Under this head, the assessee provides user specific information covering geological studies, mineral exploration, city map preparation, land use and vegetation cover mapping etc. The appellant's contention is that these involve merely providing data and information on electronic media for a price and did not involve any consultancy. This is not true as they did not just involve provision of data but also its interpretation and providing report. The demand on this account has been confirmed by the learned Commissioner.

15. Learned special counsel contests the assessee's arguments that the nature of their services is mere survey and mapping services which were subject to service tax only from 16.06.2005. As can be seen from the nature of the activities above, they do not merely involve survey and mapping services but have a much larger scope and involves providing technical assistance and consultancy. Thus, these services fall under scientific and technical consultancy services.

16. On the question of invocation of extended period of limitation, learned special counsel would argue that the assessee never disclosed the nature of their activities to the department. But for the investigations conducted by the department, their activities would not have come to light. This certainly constitutes suppression of facts and justifies invoking extended period of limitation. The penalties imposed by the learned Commissioner are also sustainable for these reasons. He would, therefore, submit that the revenue's appeal may be upheld and the assessee's appeal may be rejected.

17. We have considered the arguments on both sides and perused the records. Although the appellant obtained registration under three categories of services the demand in this SCN is only under the heads of 'Photography services' and 'Scientific and technical consultancy services'. We proceed to examine the case on merits in the first place and then on limitation and finally examine the imposition of penalties. As far as the demand under the

head of 'Photography services' is concerned, the assessee's contention is that the nature of the services does not fall in the definition of 'Photography services' at all. The definition of Photography Service is as follows:

> *"**Taxable service**" means any service provided or to be provided by a commercial concern to any person, by a photography studio or agency in relation to photography, in any manner."*

Photography is defined under section 65(78) as follows:

> *"**Section 65(78)** – '**Photography**' includes still photography, motion picture photography, laser photography, aerial photography and fluorescent photography."*

18. Thereafter, the scope of this service has been enlarged to cover the service rendered by any person instead of services rendered only by a commercial concern only. We find that the nature of the services rendered by the appellant are photo processing of aerial films, general photography, photography by low level flying aircrafts specially suited for the purpose etc. In our view, all these services squarely fall under the definition of 'Photography service' as per Chapter V of the Finance Act, 1994. However, the second question is whether NRSC is a commercial concern or just another legal person. We find from the narration of the nature of the organisation in the SCN, impugned order and in the submissions made by both the parties that it is an autonomous organisation of the department of Space, Government of India. It is not primarily a commercial concern like any public sector undertaking. It is registered as a Society under the Societies Registration Act. Therefore, we find that it is a legal entity and is a juridical person but is definitely not a commercial concern. Having said that, the services rendered by them, for other organisations are in the nature of services in return for a payment. To that extent the nature of the activity is certainly commercial but the organisation itself is not. Therefore, we find that prior to 01.07.2012 the assessee cannot be charged service tax on photography services rendered by them. After this date, the service tax can be charged from the assessee.

19. As far as the projects completed by the appellant for Rajiv Gandhi Water Mission, Waste Land mapping, bio-electric generation etc., for other Government departments under grants-in-aid are concerned, we find that assessee's argument is that services rendered under grants-in-aid cannot be

charged to service tax. We find "grants-in-aid" is a method under which the Government grants some aid to the individual departments or organisations for carrying out specific activities which are in public good. In order to use the grants so received, they, in turn, need to engage other organisations or individuals and avail their services. For this purpose, they may procure goods or receive services from others. The supplier of such goods and the provider of such services is quite distinct from the person receiving the grants-in-aid. Such persons will not automatically get exempted from payment of service tax or excise duty unless there is a specific exemption notification in respect of such services. For instance, if a department receives grant-in-aid, say, to construct roads, the amount received is a grant-in-aid at the hands of the department. However, in order to build those roads, they will hire other contractors and pay them. At the hands of the contractors who provide necessary services, the amounts are commercial receipts for their services. Therefore, the same cannot be treated as grants-in-aid at the hands of the contractor. Otherwise, all services and goods which are ever used by any Government department will have to be exempted. Learned counsel for the assessee also argues that the payment of service tax by the assessee would mean one organisation of Government of India paying it to another. Even if it is so, if this tax has to be paid it must be. In fact, even if the Service Tax Department itself hires taxis and service tax is payable on such service, they have to pay the same out of their budget along with the billed amount to the service provider who pays the Service Tax to the Government although the amount comes back to the Government as revenue in the form of service tax. We, therefore, find no force in the argument of the appellant that no service tax must be charged on the grants-in-aid. The nature of these services, as can be seen from the records available, clearly indicates that they are in the nature of scientific and technical consultancy provided by the expertise of the assessee.

20. As far as the NATP projects are concerned, the assessee's argument was that these were conducted with funds received from the World Bank and hence must be treated as exempt under notification No.16/2002 dt.02.08.2002. We find that the exemption notification does not extend to every project which is funded by the World Bank but extends only to service

which are rendered to international organisations. Therefore, if any service is rendered to World Bank the same could have been exempted but every project which is funded by the World Bank will not get exempted.

21. As far as the projects rendered by IIRS is concerned, it is undisputed that this is a division of NRSC itself though located in Dehradun and the income received by IIRS is recorded as income of NRSC and therefore, as a registrant the assessee is liable to pay service tax on such services.

22. As far as the research projects for ICAR are concerned, as discussed above, we find that these also involve the assessee's consultancy and advice to enable ICAR to develop and evolve standardized methodologies. Therefore, these are in the nature of 'scientific and technical consultancy services' for which the assessee has been paid service charges and on which service tax has to be paid.

23. Similarly, the assessee has to pay service tax on the projects they had undertaken for the Ministry of defence for which they receive consultancy charges and the receipts have been recorded as 'consultancy' in their own books of accounts. As far as the Revenue's appeal with respect to services rendered by the assessee to ISRO/RRSC is concerned, the only ground on which the learned Commissioner has dropped this demand is on the ground that these should be treated as "in-house projects" and not services rendered by the assessee to ISRO/RRSC. It is not in doubt that the assessee is an autonomous organisation registered as Society. So are the ISRO and RRSC independent & autonomous organisations. If they were a part of the same organisation, there is no question of any amount being paid by one division to another. Since they are independent, autonomous organisations the services rendered by one to another becomes a service rendered to a client. The services rendered were in the nature of consultancy projects and the demand on this ground needs to be upheld on merits and we do so. To this extent, the order of the Commissioner needs to be set aside. As far as the demand under data dissemination and Photo product projects are concerned, the assessee under these projects provided geological studies, mineral exploration, city map preparation, land use and vegetation cover mapping backed by technical assistance to the customers to help them

execute projects. Therefore, this falls under definition of 'scientific and technical consultancy service'.

24. In view of the above, we find that the demands, as raised in the SCN, need to be upheld on merits. However, we find that the assessee in this case is an autonomous organisation under the department of Space, Government of India. It is not a private business entity. They have, of course, undertaken several research projects for a price and that is part of their revenue model. They generate funds from these projects which are used for running the organisation. For these projects, they get paid by other Governmental and non-Governmental organisations under various heads. If the assessee was clearly aware that they had to pay service tax, they could have billed their clients for the Service Tax as well. By not paying the service tax, the assessee is not gaining anything. It is a Governmental organisation run by bureaucrats and scientists, none of whom have any personal interest in evading service tax. In fact, by evading service tax nothing would be gained either by anyone individually or by their organisation. Revenue's argument is that the assessee had not come forward to disclose all their activities and therefore, they have suppressed the fact which is sufficient to invoke extended period of limitation. We do not agree with this contention. The assessee could have genuinely believed that they were not liable to pay service tax and not disclosed facts to the department or sought any advice or guidance from the department regarding taxability of their services. In this factual matrix, by no stretch of imagination can we hold that the assessee has committed fraud or collusion or wilful misstatement or suppression of facts with an intent to evade payment of service tax. Under these circumstances, we find the extended period of limitation cannot be invoked in this case. The demand, if any, within the normal period of limitation can only survive.

25. As far as the penalties are concerned, in view of our finding that there is no evidence of wilful suppression of facts with intent to evade payment of service tax, we find no penalty is imposable under section 78 of the Finance Act, 1994. We find this a fit case to invoke section 80 of the Finance Act, 1994 and waive all the penalties imposed upon the appellant.

26. In view of the above, both the appeals are disposed of as below:

1) The demands under the head of 'Photography services' prior to 01.07.2012 are set aside and after this date, demands are upheld only within the normal period of limitation.
2) The demand of service tax under the head 'Scientific & Technical consultancy service' is also upheld on all projects including the services rendered by the appellant to other autonomous organisations of the department of Space viz., ISOR and RRSC only within the normal period of limitation.
3) The interest, if any, payable on such amounts are also upheld.
4) The amount of service tax and interest, if any, paid by the assessee needs to be adjusted against these demands.
5) All demands beyond the normal period of limitation are set aside.
6) All penalties are set aside invoking section 80 of the Finance Act, 1994.

27. Both appeals are remanded to the original authority for the limited purpose of calculation of service tax payable.

(Pronounced in the open court on 24.06.2020)

(P. VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

(RACHNA GUPTA)
MEMBER (JUDICIAL)

Veda