CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD

REGIONAL BENCH

Service Tax Appeal No. 2379 of 2011

(Arising out of Order-in-original No. 07/2011-ST-Hyd.III-Adjn-Commr dated 28.04.2011 passed by Commissioner of Customs & Central Excise & Service Tax, Hyderabad)

A.P. Coal Washeries Pvt Ltd **...Appellant**
Kannala (V), Basanthnagar (P.O.)
Karimnagar Distt.

Verses

The Commissioner of Central Excise & Customs **...Respondent**
Central Excise Building,
Port Area,
Visakhapatnam

APPEARANCE:
Mr Ch. Sumanth Adv for the appellant
Mr A. Rangadham, A.R. for the Respondent

CORAM:
HON'BLE MR R. MURALIDHAR, MEMBER(JUDICIAL)
HON'BLE MR A.K. JYOTISHI, MEMBER(TECHNICAL)

FINAL ORDER NO. 30066/2023

Date of Hearing: 19.04.2023

PER R. MURALIDHAR

The learned counsels appearing for the appellant submits that the confirmed demands in the impugned Order-in-Original are under the following five heads:

Sl.No	Description	Amount confirmed in the impugned order
1.	Demand of service tax under Business Support Services	Rs. 50,06,523/
2.	Non-payment of service tax on additional amount received towards excess yield	Rs. 1,47,05,686/-
3.	Non-payment of service tax on transportation charges	Rs. 50,16,488/-
4.	Short payment of service tax on business auxiliary services	Rs. 19,90,890/-
5.	Irregular availment of cenvat credit on debit notes	Rs. 1,23,90,055/-

In respect of Rs 50,06,523/- demand confirmed on account of Business Support Services, learned counsel takes us through various clauses of the contract. He also takes us through the contract of CTA given to them in continuation of the earlier CTA contract given to some other party till the year 2005. He submits that the services undertaken by them do not fall under the category of Business Support Services and the same falls under the category of Transport of Goods in container by Road in terms of Section 65(105)(zzzp)/.

2. In respect of confirmed demand of Rs 1,47,05,686/- under the category of Business Auxiliary Service, he submits that they have been given incentives by their client when they have achieved better yield (excess yield) than what is actually specified in the contract. Such amounts are paid to the appellant in addition to the normal consideration paid by their clients. He submits that they are not required to pay any Service Tax on such incentives being paid to them. He cites the case law of Kafila Hospitality & Travel Pvt Ltd Vs Commr of ST Delhi [2021(47)GSTL 140 (Tri-LB).

3. In respect of confirmed demand of Rs 50,16,488/- under the category of transportation charges, he submits that the activities carried out by them do not fall under this classification and that they have paid more than Rs 50,00,000/- under this Head in the course of investigation and they are contesting the demand on merits.

4. In respect of confirmed demand of Rs 19,90,890/-, they submit that they were carrying this amount in their books of account, but erroneously in their ST-3 returns did not reflect the same properly because of which this demand came to be confirmed.

5. In respect of confirmed demand of Rs 1,23,90,055/- on the ground that the CENVAT credit taken was not proper, he submits that the same was taken based on the basis of Debit Notes raised by the service provider. The counsel submits that during that period, the service providers were raising Debit Notes for the service provided clearly showing the Service Tax

component therein. Even the particulars of their Service Tax Registration was properly mentioned. Though the same was mentioned as Debit Notes in actual fact they were only Invoices. On pointing out this mistake, the provider of service subsequently issued Invoices with the same Sl Numbers which were earlier reflected in the Debit Notes, therefore, he submits that it is only a small procedural error and all the requirements in terms of CENVAT Credit Rules 2004 have been fulfilled and hence, on merits their appeal should be allowed to this extent.

6. He also contests the confirmed demand on the ground of limitation. He submits that audit was taken up for their Unit for the period 2005 to 2007 on 08.03.2007 and the present issues were properly explained to them and the Audit Team was satisfied by their explanation and did not press further on account of consideration received by them for the excess yield and on account of CTA charges and other charges. Further the Show-Cause notice has relied on the documents submitted by them which are properly recorded in their Books of Accounts and were also submitted to other Statutory Authorities like Income Tax Department, Registrar of Companies etc. Therefore, he submits that when even the Audit Team had taken a view that excess yield charges, CTA charges etc., are not liable for Service Tax payments, the appellant cannot be fastened with the burden of suppression. Therefore, he prays that the confirmed demands may be set aside on account of time bar also.

7. The learned AR submits that Order-in-Original very clearly brings out the fact that the appellants were not making the payments of Service Tax on CTA and other Services provided by them. The specific clauses of the contract in respect of Excess Yield charges has come to their knowledge only after subsequent Audit taken up in 2009. Therefore he submits that both on merits as well as on account of limitation, the appellants have no case and the appeal is liable to be dismissed.

8. Heard both sides and perused the documents.

9. In respect of CENVAT credit of Rs 1,23,90,055/-, it is seen that the appellants have produced copies of the Debit Notes and Invoices issued by their service provider. These Debit Notes as well as Invoices contain all the details required to enable them to take the credit. Therefore we hold that there is no error in the appellant taking the CENVAT credit of Rs 1,23,90,055/-. The appeal to this extent is allowed on merits.

10. In respect of demand of Rs 50,06,523/-, the appellant has submitted that as the matter pertains to the year 2005 and the appellant's company is non-functional now, they will not be in a position to provide a copy of the earlier CTA Agreements entered into between KPCL and the then CTA. In the absence of this important document, it may not be possible for the Tribunal to come to a conclusion on this issue on merits.

11. With the consent of both sides, all the other confirmed demands other than the CENVAT credit of Rs 1,23,90,055/- were taken up for consideration only on the issue of limitation without going into the merits of the case.

12. It is on record that the appellant is a Pvt Limited Company and they have been maintaining proper records and filing Statutory Documents before various Authorities. There is no allegation that they have failed to file any returns with the Department. Apart from this, it is on record that Audit was taken up in 2007, wherein the CTA and other charges being collected and Excess Yield consideration were also noted and were allowed to be deducted from the total consideration value from the Service Tax to be paid by the appellant. This shows that even the Audit Team was carrying the same view till the audit was conducted in 2007.

12. In view of these facts, we do not find any reason to fasten the allegation of suppression on the appellants. Accordingly, in respect of the confirmed demands under Sl No (1) (2) (3) & (4), above, we allow the

Appeal on limitation alone. As the appellant has submitted that they are not contesting these issues on merits, the Department is to work out the balance amount, if any, to be paid under these Heads for the normal period along with interest.

13. Since we are holding that there is no suppression in this case, the penalties are set aside.

14. Appeal is partially allowed as per the above terms.

(order pronounced and dictated in the open Court)

(R. MURALIDHAR)
MEMBER(JUDICIAL)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

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