**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA**
**EASTERN ZONAL BENCH: KOLKATA**

**Appeal No. ST/115/2010**

(Arising out of Order-in-Original No. 5/ST/Commr./2010 dated 02/02/2010 passed by the Commissioner of Central Excise and Service Tax, Ranchi.)

M/s. Centre for Engineering & Technology, Ranchi (Unit of Steel Authority of India Ltd).

Appellant (s)

**Vs.**

Commissioner of Service Tax, Kolkata

Respondent (S)

<u>Appearance:</u>
Shri Ravi Raghavan, Adv. for the Appellant (s)
Shri K. Chowdhari, Suptd. (A. R.) for the Revenue

**CORAM:**
**HON'BLE SHRI P. K. CHOUDHARY, MEMBER (JUDICIAL)**
**HON'BLE SHRI V. PADMANABHAN, MEMBER (TECHNICAL)**

Date of Hearing: -27.09.2018
Order NO. FO/76693/2018

**<u>PER CORAM</u>**

Briefly stated the facts of the case are that the appellant is a unit of SAIL, engaged in; in-house design, engineering activities for all the units of SAIL i.e. M/s. Bhilai Steel Plant, Durgapur Steel Plant, Rourkela Steel Plant, Bokaro Steel Plant, Iisco Steel Plant etc. Show Cause Notice dated 21/10/2008 was issued alleging that the appellant is engaged in providing taxable service under the category "Consulting Engineering" to various units and plants of the Steel Authority of India Limited. The Show Cause Notice also alleged that such units and plants under SAIL make use of technical/engineering consultancy and assistance in their manufacturing enterprises.

2. The Adjudicating Authority vide the impugned order, confirmed the demand of Service Tax amounting to Rs.12,38,56,428/- only for the period 2003-04 to 2007-08 along with interest and imposed penalty of equal amount both under Section 76 and under Section 78 and also imposed penalty of Rs.1,000/- under Section 77 of the Finance Act, 1994. Hence, the present appeal before the Tribunal.

3. The Ld. Advocate appearing on behalf of the appellant submits that the appellant is a unit of SAIL, engaged in in-house design and engineering activities for all the units of SAIL. The demand has been confirmed on the ground that the services provided by the Appellant to any other units of SAIL, is taxable as consulting engineering services.

It is his submission that they are one of the units of SAIL, engaged in in-house design and engineering activities. The Annual Financial Statement of SAIL clearly indicates that the appellant is one of the units of SAIL and the activities undertaken by the appellant for the other units of SAIL, will amount to service to self and cannot be subjected to Service Tax. The PAN of SAIL and the Service Tax Registration No. granted to the other units of SAIL, is common to the appellant which in itself proves that the appellant is a unit of SAIL.

The Ld. Advocate made the Bench go through pages 63, 64, 65 and 138, 139 & 152 which shows that the appellant unit was formed in pursuance to the resolution taken in the Board Meeting on 28/01/1982.

The Ld. Advocate argued that the impugned order cannot be sustained as the appellant is a unit of SAIL and cannot be called an associated enterprise for other units and plants of SAIL. Since, the appellant is not receiving any consideration for any activity to the other units of SAIL, the debit notes raised between the appellant and other units of SAIL for allocation of expenditure towards the projects should not be considered as monetary consideration received by the appellant as the said transaction get negated at the time of final consolidation of accounts.

It is his submission that the book adjustments by way of debit advices/notes from one unit to another unit are nothing but transfer of expenses through book entry. For taxability of Service Tax, it is mandatory that the Services should be provided to a distinct separate entity.

The Ld. Advocate also argued that the extended period of limitation is not invokable in the present case. It is his submission that since all the relevant facts were before the Department since 2004, there was no occasion for issuance of the show Cause Notice and the Show Cause Notice dated 21/10/2008 is barred by limitation. In support of his submission, he relied upon the following decisions:-

(i) Sangam Spinners Vs. CCE 2007 (208) ELT 386 (Tri-Del)

(ii) Precot Mills Ltd. Vs. CCE 2006 (2) STR) 495 (Tri-Bang)

(iii) Indian Oil Corporation ltd. Vs. CCE 2007 (8) STR 527 (Tri-Kol)

(iv) Chemplast Sanmar Ltd. Vs. CCE 2010 (19) STR (Tri-Chenn)

4. The Ld. DR submits that there is an allocation of fund between the appellant and other units to whom the service is provided. It is his submission that the appellant is issuing debit notes towards the value of services. Further, bare reading of the statutory provisions, it transpires that the book adjustment qua, the transaction of taxable services with any associated enterprise are taxable. Justifying the order, Ld. DR has prayed for dismissal of the appeal.

5. Heard both sides and perused the appeal records.

6. We find that the issue is no more res-entigra in view of the various decisions of the Tribunal and the High Courts. We also observe that the Tribunal in the case of M/s. Executive Engineering Vs. CCE & ST, Jaipur, as reported in 2018-VIL-641-CESTAT-DEL-ST has held that service provided to oneself is not taxable. The relevant paragraphs of the Tribunal's decision are reproduced below:-

> ***"6. While rebutting these arguments, ld. DR has impressed upon that separate registration under service tax make the entities as two different concern as that of an associated concern. Thus there is no wrong in the order under challenge. The ld. DR also impressed upon Section 67 of the Finance Act, 1994 the explanation there of as has rightly been considered by the adjudicating authority below. It is impressed upon that bare reading of this provision makes it abundantly clear that even the book adjustment qua the transaction of taxable services with any associated enterprise are taxable. Justifying the order, ld. DR has prayed for appeal to be dismissed.***
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> ***7. After hearing both the parties and observing the entire records, we observe and hold as follows: The main issue to be adjudicated is as to whether the appellant has to pay service tax on the services provided to M/s. CMST-BSNL, Jaipur which is having a separate service tax registration. Perusal of order challenge shows that the adjudicating***

***authority has confirmed the demand by holding that the service has been provided by the appellant to its associate company i.e. M/s. CMST-BSNL and an amount is charged as shown in books of account which as per the explanation to section 67 (4) is taxable of the Act.***

***8. We observe from the facts on record the Department of Telecommunication was operating composite telecommunication services and thereafter w.e.f. 01.10.2000, M/s. BSNL was incorporated as a Central Government Company for this purpose but its policies are totally formulated by the Department of Telecommunication Government of India. BSNL is providing telecom services in different Circles in India and different offices/ units under one circle of BSNL cannot be treated as associated enterprises as these are not intermediaries in the management of or control or capital of the other enterprises as required for being associated enterprises as per Section 92 A of the Income Tax Act, 1961. Here in this case both the appellant and CMTS-BSNL are units/office of one and the same company i.e. BSNL. In view thereof we are of the opinion that the adjudicating officer has not appreciated the fact that monthly advice debit notes from one unit EE-BSNL, Jaipur are nothing but transfer of expenses through book entry to another unit of the same Circle and for taxability under the service tax law, it is mandatory that the services has to be provided to a different unit and the receiver of the taxable service must be a distinct entity. In the instant case, the book entry through debit advice note has been made by the appellant for transfer of expenses to another unit of BSNL i.e. CMTS and it will not make the gross transaction accounted for between units of the organization. The appellant has placed reliance on a decision of the Hon'ble Rajasthan High Court in the case of CCE Vs. BSNL [2016 (43) STR 540 (Raj.).]. We find that the said decision is related to availment of cenvat credit transferred by the Head office to assessee on Advise of Transfer. In this case the credit has been found admissible on the ground that the assessee and the Head office fell in the same circle of BSNL. In the instant case also the appellant and the CMTS-BSNL both fall in the same circle of BSNL, hence the transaction between the two cannot be termed as***

***provision of service and hence no service tax is payable thereon.***

***9. For the provision of service there has to be a service provider as well as a service recipient. Tribunal in the case of Saturday Club Ltd. Vs. Asstt. Commr, Service Tax as held that there should be existing two entities for having transactions as against consideration. In the present case we observe that same is not the situation. No doubt appellant is a service provider and M/s. CMST, BSNL is service recipient and that both have different service tax registration, but the fact remains is that they both have the same PAN number as such both have same incorporation i.e. both are the one and the same entity. This observation make it clear that mandatory requirement for service tax that is of existence of two different entities is absolutely missing in the case in hand.***

***Hence the transaction between the two cannot be termed as provision of service and hence no service tax is payable Hon'ble Apex Court in the case of All India Federation of Tax practitiers case 2007(7) STR 625 SC has held that service tax is imposed every time service is rendered to a customer or client, as per Section 65 (105) (zzzx) of the Finance Act, 1994. Thus taxable event is held to be each activity of service provider to a service recipient. This makes it clear that service provided to one own self is not the taxable event. Once this is the situation Section 67 of the Act has no applicability nor will be relevant the explanation in sub section 4 thereof. We therefore are of the opinion that adjudicating authority below has wrongly relied upon the concept of book adjustment which is relevant only when the event is taxable.***

***10. Once no taxability is involved question of evasion of tax does not arise. The question for assessee to suppress or mis-represent the fact with the intent to evade tax also retains no relevant. Resultantly the department was not entitled to invoke the extended period of limitation. Show cause notice is thereof held to be time barred. Resultantly, we opine, that commissioner has wrongly imposed the***

> ***penalty, while adjudicating a time barred show cause notice."***

The above decision is squarely applicable to the facts of the present case.

7. In view of the above discussions, the impugned order is set aside and the appeal filed by the appellant is allowed with consequential relief, if any.

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| Sd/- | Sd/- |
| **(V. PADMANABHAN)** | **(P. K. CHOUDHARY)** |
| **MEMBER (TECHNICAL)** | **MEMBER (JUDICIAL)** |

Pooja