IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.1

Service Tax Appeal No.382 of 2012
(On behalf of Appellant)

(Arising out of Order-in-Appeal No.112/PAT/S.Tax/Appeal/2012 dated 16.05.2012 passed by Commissioner (Appeals) of Customs & Central Excise, Patna)

M/s Polular Book Stores
Pachana Road, Lakhisarai, Bihar

Appellant

VERSUS

Commissioner of Central Excise & Service Tax, Patna
C.R.Building, Beerchand Patel Path, Patna-800001

Respondent

APPERANCE :

Shri Ananda Sen, Advocate for the Appellant
Shri P.K.Ghosh, Authorized Representative for the Respondent

CORAM:
HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR.K.ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO……76305/2023

DATE OF HEARING : 01 .08.2023
DATE OF DECISION : 01 .08.2023

Per Ashok Jindal :

The appellant is in appeal against the impugned order wherein the service tax has been demanded under "photography services".

2. The facts of the case are that the appellant entered into an agreement with the District Election Officer Cum D.M., Lakhisarai, Bihar for execution of the work of preparation of photo identity card in terms of the said agreement.

3. The allegation of the Revenue is that the appellant was engaged in making of voter identity card for District Election Officer and as such, have rendered "Photography Service" to District Election Officer.

Therefore, such activities of making voter identity card came under the purview of Section 65 (78) and 65 (105) (zb).

4. Therefore, a show-cause notice was issued on 23.03.2011 to demand service tax on the activity undertaken by the appellant.

5. The matter was adjudicated. The service tax was confirmed.

6. Against the said order, the appellant is before us.

6. The ld.Counsel for the appellant submits that the work assigned by the District Election Officer, is constituted under the Constitution of India. He submits that they are not carrying out the activity of Photography service issuing electors photo Identity Cards and the issue of electors photo identity cards cannot be considered as "Photo Identity".

7. The ld.Counsel further submits that the identical issue came before this Tribunal in the case of Commissioner of Customs & Central Excise, Hyderabad II Vs. CMC Ltd. reported in 2007 (7) STR 702 (Bag.CESTAT), wherein this Tribunal has observed as under :

> "***5.*** *The learned Counsel, Shri K.S. Ravi Shankar, referred to Circular Nos. 141/52/95-CX, dated 14-8-1995 and 195/20/CX., dated 3-4-1996 wherein a clarification has been given by the Board with regard to the Photo Identity Cards. In terms of the said Notification, the department has viewed that the Photo Identity Cards are required to be treated as goods and to be classified under sub-heading 4109.90 of the Schedule to the CET, 1985. It is his submission that once the department has taken this view, then the question of attracting Service tax does not arise. It is his further submission that the issue of Photo Identity Cards by the Election Commissioner is a sovereign duty under the Constitution of India and such activity performed by an officer of the Election Commission is required to be treated as an activity of*

the State and, therefore, it cannot be levied to tax. He finds strength in the ruling of the Tribunal in the case of CCE, Indore v. Ankit Consultancy Ltd. - 2007 (6) S.T.R. 101 (Tri.-Del.) wherein this issue has been decided in assessee's favour.

***8.** We have carefully considered the submissions and we note from the Stay Order given in these matters that the activity carried out by the parties are sovereign activity performed by the State functionaries. The Office of the Chief Election Commission is constituted under the Constitution of India. They are not carrying out the activity of photographic service by issuing Electors Photo Identity Cards. The issue of Electors Photo Identity Cards cannot be considered as "Photo Identity" falling within the definition of "Photographic Service" as per Section 65(78) as well as Section 65(79). The Circular referred to by the Counsels clearly apply to the facts of the case. Furthermore, the Tribunal, in the case of CCE v. Ankit Consultancy Ltd. (cited supra), has clearly held that any activity performed by a State organ to discharge the sovereign activity of the State cannot be brought under the tax limit. This finding is also supported by the Circulars noted supra. Further, it is seen that the Board's Circular No. 141/52/95-CX and 195/20/CX views this activity to bring them under the definition of "goods" for exigibility. There is no merit in the Revenue appeals and the same are rejected and the appeal of M/s. Bajarang Infotech Systems Pvt. Ltd. is allowed with consequential relief, if any."*

8. The issue was again examined by this Tribunal in the case of Commissioner of Customs, Central Excise & Service Tax, Hyderabad II Vs. C.S.Software Enterprises Limited reported in 2008 (10) STR 367 (Bag.CESTAT), wherein this Tribunal has held as under :

*"**4.** We have considered the submissions. We find that the issue in this case has already been decided in terms of Final Order*

rendered in the case of CCE, Hyderabad v. M/s. Bajarang Infotech Systems Pvt. Ltd. & M/s. CMC Limited & Others by Final Order No. 779 to 782/2007 dated 23-7-2007 [2007 (7) S.T.R. 702 (T)]. The order also covers the cases of M/s. CMC Ltd. and M/s. Kerala State Electronics Development Corporation Ltd. This Tribunal after due consideration and also applying the ratio of CCE, Indore v. Ankit Consultancy Ltd. - 2007 (6) S.T.R. 101 (Tri. - Del) has held that the activity of preparing elector photo identity cards cannot be considered to fall within the ambit of photographic services as per Section 65(78) as well as Section 65(79) of the Finance Act. We find that the issue is fully decided in assessee's favour. The impugned order passed by the Commissioner (A) is legal and proper. There is no merit in this appeal and the same is rejected.

9. Further in the case of CCEx., Lucknow Vs. M/s Altcom Private Limited vide Final Order No.57894/2013 dated 03.10.2013, this Tribunal has held as under :

"We find that the respondents are providing the service to District Election Officer for entire work of processing of EPIC which consists of camping at several places for capturing photos of electors after verification, printing of details of electors, pasting of photos of electors on cards, lamination of cards, preparation of duplicates of EPIC in miniaturized form and delivery of two sets of miniatures to DEO. The respondents received the consideration for all these activities. Revenue is demanding the tax on all these activities under photography Service. We find that Commissioner (Appeals) has relied upon the judgments of the Hon'ble Tribunal in the case of CCE, Hyderabad Vs. CMC reported in 2007 (083) RLT 481 (CESTAT-Ban.) and in case of C.S. Software Enterprises Ltd., reported in 2008 (10) STR 367 (Tri.-Bang.) wherein it was held by the Tribunal that preparation of EPIC is not covered under photography Service. We do not find any infirmity in the finding

of Commissioner (Appeal). Accordingly we hold the Order-in-Appeal and reject the Revenue's Appeal."

10. In view of the above decision, the issue in dispute is settled that the appellant is providing the service to District Election Officer for entire work of processing of EPIC, which consists of camping at several places for capturing photos of electors after verification, printing of details of electors, pasting of photo identity card, electors on cards, preparation of duplicate of EPIC in miniaturized form and the Tribunal also held that the preparation of EPIC is not covered under the photography service.

11. Respectfully following the above decision of this Tribunal, we hold that the activity undertaken by the appellant for preparation of Election Photo Identity Card, does not qualify under "Photography Service".

12. Accordingly, we do not find any merit in the impugned order and the same set aside.

13. In the result, the appeal is allowed with consequential relief, if any.

(Operative part of the order was pronounced in the open court)

(Ashok Jindal)
Member (Judicial)

(K.Anpazhakan)
Member (Technical)

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