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

REGIONAL BENCH – COURT NO.1

Service Tax Appeal No.76125 of 2016
(On behalf of Appellant)

(Arising out of Order-in-Original/ST/Shillong No.05/2016 dated 31.03.2016 passed by Commissioner of Central Excise,Shillong)

M/s Advance Root Knowledge Informatics
16, Office Lane, Melar Math, Agartala, Tripura (West)-799001

Appellant

VERSUS

Commissioner of Central Excise & Service Tax, Shillong
Morellow Compound, M.G.Road, Shillong-793001

Respondent

WITH

Service Tax Appeal No.76126 of 2016
(On behalf of Appellant)

(Arising out of Order-in-Original/ST/Shillong No.05/2016 dated 31.03.2016 passed by Commissioner of Central Excise,Shillong)

M/s ARK Informatics Society
16, Office Lane, Melar Math, Agartala, Tripura (West)-799001

Appellant

VERSUS

Commissioner of Central Excise & Service Tax, Shillong
Morellow Compound, M.G.Road, Shillong-793001

Respondent

AND

Service Tax Appeal No.76181 of 2016
(On behalf of Appellant)

(Arising out of Order-in-Original/ST/Shillong No.05/2016 dated 31.03.2016 passed by Commissioner of Central Excise,Shillong)

M/s Senrysa Society For Social Development
Ramnagar Road No.4, Agartala, Tripura (West)-799002

Appellant

VERSUS

Commissioner of Central Excise & Service Tax, Shillong
Morellow Compound, M.G.Road, Shillong-793001

Respondent

APPERANCE :

Shri Pranab Sikdar, Consultant for the Appellant
Shri S.Mukhopadhyay, Authorized Representative for the Respondent

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

FINAL ORDER NO.75155-75157/2024

DATE OF HEARING : 23.01.2024
DATE OF DECISION : 23.01.2024

Per Ashok Jindal :

The appellants are in appeals against the impugned order demanding service tax under the category of management and business consultant service and credit card, debit card, charge card or other payment card services which are under negative list of services after 01.07.2012.

2. The issue in all the three appeals is common, therefore, all are being decided by a common order.

3. The facts of the case are that during the period 2011-12 and 2012-13, the appellants were appointed by Tripura Gramin Bank as business correspondent for disbursal up to 100 days of wages to the unskilled rural labours as a measure of employment generation under Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA) as per RBI Circular. The appellants are engaged in the ancillary works of bank in rural service.

3.1 The Revenue is of the view that the activities undertaken by the appellants are covered by the category of "Management & Business

Consultant Service" and "Credit Card, Debit Card or other payment card Services".

3.2 A show-cause notice was issued to the appellants proposing that the appellants are liable to pay service tax as per agreement with the Service Tax Department.

3.3 The matter was adjudicated. The demand of service tax was confirmed holding that the amount released by the appellants is inclusive of the amount of service tax, therefore, they are liable to pay the service tax.

3.4 Against the said order, the appellants are before us.

4. The ld.Counsel for the appellants submits that the demand of service tax has been confirmed against the appellants for two periods, one is prior to 01.07.2012 and another is after 01.07.2012. For the service demanded prior to 01.07.2012, the "Management & Business Consultant Service" was with regard to management of any organization or business in any manner, which means, if the appellant is engaged in the activity of any kind of advice, consultancy or technical assistance in relation to financial management, then only the appellant is liable to service tax. Admittedly, the appellant is nowhere engaged in such activity and nowhere is giving advice, consultancy or technical assistance. Therefore, for the period, prior to 01.07.2012, no service tax is payable and under the negative regime post 01.07.2012, the activity was exempted under Notification No.25/2012-ST Serial No.29 (g) dated 20.06.2012. Therefore, they are not liable to pay service tax.

5. On the other hand, the ld.A.R. for the Revenue supported the impugned order.

6. Heard the parties and considered the submissions.

7. We find that the appellants were appointed by Tripura Gramin Bank for disbursal up to 100 days of wages to the unskilled rural labours as a measure of employment generation under Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA) as per RBI Circular.

8. The "taxable service" by a management or business consultant service has been defined under Section 65 (105) (r) of the Finance Act, 1994, which is as under :

> *"Management or business Consultant" means any person who is engaged in providing any service, either directly or indirectly, in connection with the management of any organization or business is any manner and includes any person who renders any advice, consultancy or technical assistance, in relation to financial management, human resources management, marketing management, production management, logistics management, procurement and management of information, technology resources or other similar areas of management ; [Section 65 (65) of Finance Act, 1994 as amended]"*

9. On going through the said definition, we do not find that the appellants are engaged in any activity or any advice, consultancy or technical assistance in relation to financial management, human resources, marketing management/logistics management, procurement

and management and management of information technology resources or other similar areas of management services.

10. Therefore, we hold that the activity of disbursal of wages to the unskilled rural labours as a measure of employment generation under Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA), does not cover under "Management and Business Consultant" Services. Therefore, for the period prior to 01.07.2012, the appellants are not liable to pay service tax.

11. Further, we hold that for the period post 01.07.2012, the activity of the appellant is covered under Notification No.25/2012-ST Serial No.29 (g) dated 20.06.2012, which is as under :

> *"(g) business facilitator or a business correspondent to a banking company or an insurance company, in a rural area ; or "*

As the appellant is a business facilitator to Gramin Bank, which is squarely covered under the exemption Notification as stated herein above, therefore, for the period post 01.07.2012, the appellants are also not liable to pay service tax.

12. The adjudicating authority has held that as there was an agreement and in terms of the agreement, the service tax was inclusive which is to be borne to the appellants. Therefore, all the services provided by the appellants are inclusive of service tax, therefore, they are liable to pay service tax. We hold that as the services provided by the appellants are exempted from payment of service tax, therefore, they are not required to pay any service tax as the appellant has not collected any service tax. Further, the service rendered is inclusive of

service tax, it does not mean that if the service itself is exempted, the assesse is liable to pay service tax. Therefore, no service tax is payable by the appellants.

13. In view of the aforesaid observations, we set aside the impugned order and allow all the appeals 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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