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

Service Tax Appeal No. 70979 of 2013

(Arising out of the Order-in-Original No. 31/COMMR/ST/GHY/12-13 dated 25.03.2013 passed by Commissioner of Central Excise & Service Tax, Guwahati.)

M/s Assam Electronics Development Corporation Ltd.,
(AMTRON), Industrial Estate, Bamunimaidan, Guwahati-21, (Assam).

...Appellant (s)

VERSUS

Commissioner of Central Excise & S. Tax, Guwahati,
5th Floor, Sethi Trust Building, Bhangagarh, G. S. Road, Guwahati-781005 (Assam). **.**
. ..**Respondent(s)**

APPERANCE :
Shri Devraj Sahu, Advocate for the Appellant
Shri J. Chattopadhyay, Authorized Representative for the Respondent

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

FINAL ORDER No...75182/2024

DATE OF HEARING : 06.02.2024
DATE OF DECISION : 06.02.2024

PER K. ANPAZHAKAN :

The present Appeal has been filed by the Appellant M/s. Assam Electronic Development Corporation Ltd., assailing the impugned Order-in-Original No. 31/COMMR/ST/GHY/12-13 dated 25th March,2013 passed by the Ld. Commissioner of Central Excise and Service Tax, Guwahati, demanding Service Tax of Rs. 2,12,48,489/- along with interest.

2. The Appellant is a Govt. of Assam Undertaking, registered under Companies Act and declared as a nodal agency to implement and execute the National E-Governance Action Plan (NEGAP) formulated by the Govt. of India. The Appellant Corporation undertook various projects of the State Govt. as a nodal agency on behalf of the State Govt. in development of IT Sector. The department raised the dispute alleging *inter alia* that the Appellant had provided various taxable

services viz. "Business Auxiliary Service" to the Govt. clients and failed to discharge their service tax liabilities. Accordingly, the demand of Rs. 2,12,48,489/- raised in the Notice was confirmed by the Ld. Commissioner of C.Ex and Service Tax, Guwahati vide the impugned order dated 25.03.2013. He also demanded interest and imposed penalty under section 78 of the Finance Act, 1994.

3. In their grounds of appeal, the Appellant submits that the taxability on Information Technology Software Service was introduced w.e.f 16.05.2008 and therefore, such service was not in the statute book prior to 16.05.2008 and no service tax is imposable on Information Technology Software Service up to 15.05.2008. Hence, demand confirmed by the Ld. Commissioner of Central Excise and Service tax for the period from 01.04.2006 to 15.05.2008 is beyond the scope of the Finance Act, 1994 and not sustainable in law. The Appellant further submits that they have already paid Service Tax amounting to Rs. Rs.98,55,321/- on the activities which are liable to service tax and the same has been appropriated by the Ld. Adjudicating Authority in the impugned Order-in-Original No. 31/COMMR/ST/GHY/12-13 dated 25th March,2013. Further, they have also paid a sum of Rs. 11,11,390/ towards interest for late payment of service tax, which has also been appropriated in the impugned order.

4. The Appellant submits that they are disputing their service tax liabilities only in respect of the following activities:

1.	Service provided to DTO, Kamrup(M) – DL/RC issue	Rs. 47,76,032/-		*Business Auxiliary Service .*
2	Education Department (GOA), Anandoram Barua Award Scheme,	Rs. 68,74,524/-		*Business Auxiliary Service*
3	District Computer Centre(s)	Rs. 5,08,515/-		*Business Auxiliary Service.*
	Total Disputed Service Tax		**Rs. 1,21,59,071/-**	No Service Tax payable.

Service Tax Appeal No. 70979 of 2013

5 The disputed service tax liabilities are as under:

(a). Providing Services to the Ministry of Transport to the Govt. of Assam:

The Appellant submits that they entered into an agreement dated 20.01.2006 with the Transport Department to the Govt. of Assam, to provide services in relation to issue of Driving License (DL) and Registration Certificate of Vehicles (RC) under the Motor Vehicles Act, 1988, implementing Information Technology Software for a period of 5 years subject to renewable later. The Appellant received an amount of Rs. 4,79,55,248/- on which the demand of service tax of Rs.47,67,032/- has been confirmed under **"Business Auxiliary Service"**. The Appellant submits that performing functions of Ministry of Transport is a statutory function of the Govt. and fees collected by them is not taxable service under the category of Business Auxiliary Service. In support of their contention they referred Circular No. 89/7/2006-ST dated 18.12.2006 issued under F.No. 255/1/2006-CX.4, wherein it has been clarified that the fee collected for performing statutory functions of the Government are in the nature of compulsory levy as per the provisions of the relevant statute, and it is deposited into the Government Treasury. Such activity is purely in public interest and it is undertaken as a **mandatory and statutory function**. These are not in the nature of service to any particular individual for any consideration. Therefore, such an activity performed by a sovereign/public authority under the provisions of law does not constitute provision of taxable service to a person and, therefore, no service tax is leviable on such activities. In view of the above said clarification, the Appellant submits that the service tax demand confirmed in the impugned order on this count is not sustainable.

(b). Implementing IT Education under Education Department:

The Appellant submits that they were appointed as a nodal implementing agency by the Education Department to the Govt. of Assam for implementation of the Scheme " Anundoram Barooah Award Scheme" to promote IT Education to inspire the youth in IT Sector amongst the meritorious students, vide Notification No. PMA(S)111/2010/55 dated 21.08.2010 issued by the Education Department to the Govt. of Assam. The Appellant has received an amount of Rs. 6,84,62,915, for execution of this IT Scheme and service tax of Rs. 68,74,524/- has been confirmed in the impugned order on this amount under the category of taxable Service **"Business Auxiliary Service"**. The Appellant submits that the amount received in executing IT education implementing "Anandoram Barooah Award Scheme" is the Scheme of the Govt. of Assam and is not liable to service tax under the category of Business Auxiliary Service. In support of this contention, they r*eferred Department Circular No. 125/7/2010-ST issued under F.No. 354/35/2010-TRU dated 30.07.2010' wherein it has been clarified that* Levy and collection of service tax on State Government agencies/ departments implementing Centrally Sponsored Scheme under a central grant, is not legally tenable and therefore in such cases service tax should not be demanded. They also cited the decision in the case of Avadhi Computers Pvt. Ltd. Vs. Commr. of C.Ex, Mangalore, 2016 (46) S.T.R. 429 (Tri- Bang.), in support of their claim. Accordingly, they prayed for setting aside this demand confirmed in the impugned order.

(c). Imparting IT Education under Rajiv Gandhi Computer Literacy Programme in Schools of Assam:

The Appellant submits that the Department of Planning & Development to the Govt. of Assam appointed them to provide Education on IT in Schools in Assam under Rajiv Gandhi Computer Literacy Programme, Vide Notification No. PDS.129/2003/Pt/9 dated 15.07.2003. During the disputed period, the Appellant received an amount of Rs. 48,03,392/- and service tax of Rs.5,08,515/-. has been confirmed on this amount in the impugned order under the category of **"Business Auxiliary Service".** The Appellant submits that the amount collected for implementing the Central Govt. sponsored scheme under Rajiv Gandhi Computer Literacy Programme, is not liable to service tax under the category of Business Auxiliary Service. In support of this contention, they r*eferred Department Circular No. 125/7/2010-ST issued under F.No. 354/35/2010-TRU dated 30.07.2010' wherein it has been clarified* *that* Levy and collection of service tax on State Government agencies/ departments implementing Centrally Sponsored Scheme under a central grant, is not legally tenable and therefore in such cases service tax should not be demanded. Accordingly, they prayed for setting aside this demand confirmed in the impugned order.

6. The Ld. D.R. reiterated the findings of the adjudicating authority in the impugned order.

7. Heard both sides and perused the appeal documents.

8. We find that the Appellant has been paying service tax on various activities undertaken by them. It is admitted in the impugned order that they have already paid Service Tax amounting to Rs. Rs.98,55,321/- on the activities which are liable to service tax and the same has been appropriated by the Ld. Adjudicating Authority in the impugned Order-in-Original dated 25th March,2013. Further, they have also paid a sum of Rs. 11,11,390/ towards interest for late payment of service tax, which has also been appropriated in the impugned order. However, the Appellant disputed their service tax liabilities in respect of the activities listed at (a), (b) and (c) mentioned in Para 4 supra.

8.1. In respect of the service provided by the Appellant to the Ministry of Transport to the Govt. of Assam, we observe that the services rendered are in relation to issue of Driving License (DL) and Registration Certificate of Vehicles (RC) under the Motor Vehicles Act, 1988. We find that the Appellant has performed the functions of Ministry of Transport, which is a statutory function of the Govt. Hence, we observe that the fees collected by them is not taxable service under the category of Business Auxiliary Service. We observe that the Appellant has referred Circular No. 89/7/2006-ST, dated 18.12.2006 issued under F.No. 255/1/2006-CX.4,in support of their contention that they are not liable to pay service tax for these services, but the adjudicating authority has not considered this Circular. There is no finding regarding the non availability of the Circular to the Appellant in the impugned order. For the sake of ready reference the contents of the said circular is reproduced below:

Government of India

Ministry of Finance (Department of Revenue)
Central Board of Excise & Customs, New Delhi

Subject : Applicability of Service tax on fee collected by Public Authorities while performing statutory functions /duties under the provisions of a law - Regarding

A number of sovereign/public authorities (i.e. an agency constituted/set up by government) perform certain functions/ duties, which are statutory in nature. These functions are performed in terms of specific responsibility assigned to them under the law in force. For examples, the Regional Reference Standards Laboratories (RRSL) undertake verification, approval and calibration of weighing and measuring instruments; the Regional Transport Officer (RTO) issues fitness certificate to the vehicles; the Directorate of Boilers inspects and issues certificate for boilers; or Explosive Department inspects and issues certificate for petroleum storage tank, LPG/CNG tank in terms of provisions of the relevant laws. Fee as prescribed is charged and the same is ultimately deposited into the Government Treasury. A doubt has arisen whether such activities provided by a sovereign/public authority required to be provided under a statute can be considered as ‘provision of service’ for the purpose of levy of service tax.

2. The issue has been examined. The Board is of the view that the activities performed by the sovereign/public authorities under the provision of law are in the nature of statutory obligations which are to be fulfilled in accordance with law. The fee collected by them for performing such activities is in the nature of compulsory levy as per the provisions of the relevant statute, and it is deposited into the Government Treasury. Such activity is purely in public interest and it is undertaken as **mandatory and statutory function**. These are not in the nature of service to any particular individual for any consideration. Therefore, such an activity performed by a sovereign/public authority under the provisions of law does not constitute provision of taxable service to a person and, therefore, no service tax is leviable on such activities.

3. However, if such authority performs a service, which is not in the nature of statutory activity and the same is undertaken for a consideration not in the nature of statutory fee/levy, then in such cases, service tax would be leviable, if the activity undertaken falls within the ambit of a taxable service.

4. Trade and field formations may be advised accordingly.

5. Hindi version will follow”.

8.2 We find that the clarification in the Circular mentioned above squarely covers the issue on hand. We find that the activity performed by the Appellant is a function to be performed by a public authority under the provisions of law and hence it does not constitute a taxable service for the purpose of levy of service tax. Accordingly, we hold that no service tax is leviable on such activities. In view of the above said clarification issued by the Ministry, we hold that the service tax confirmed in the impugned order on this count is not sustainable and we set aside the same.

8.3 Regarding the demand of service tax on the activities of Implementing IT Education under Education Department mentioned at (b) in Para 4 supra, the

Appellant submits that they received the amount in connection with implementing "Anandoram Barooah Award Scheme" which is the Scheme of the Govt. of Assam and hence it is not liable to service tax under the category of Business Auxiliary Service. In support of this contention, they r*eferred Department Circular No. 125/7/2010-ST issued under F.No. 354/35/2010-TRU dated 30.07.2010' wherein it has been clarified that* Levy and collection of service tax on State Government agencies/ departments implementing Centrally Sponsored Scheme under a central grant, is not legally tenable and therefore in such cases service tax should not be demanded. We find that the Circular is applicable to the issue on hand. For the sake of ready reference, the contents of the said circular is reproduced below:

Circular No. 125/7/2010-S.T., dated 30-7-2010

F.No. 354/35/2010-TRU

Government of India

Ministry of Finance (Department of Revenue)

Central Board of Excise & Customs, New Delhi

Subject : Services provided by State Governments under Centrally Sponsored Schemes (CSS) - Regarding.

In the recent past, instances have come to the notice of the Board, where field formations have demanded service tax from State Governments or their departments/agencies, for providing certain services under the centrally sponsored schemes (CSS). To cite an illustration, in the case of the centrally sponsored National Biogas and Manure Management Program operating under Ministry of New and Renewable Energy, State Government agencies were involved in setting up of bio-gas plants in villages. Certain expenses incurred by the State Governments or their departments/agencies during the course of setting up of such bio-gas plants were reimbursed by the Central Government by way of a grant under the CSS. Jurisdictional service tax authorities demanded service tax from the State Government department/agency, saying that the reimbursements received by the concerned State Government department/ agency (as service provider) are nothing but consideration for installation and commissioning service received from the Central Government (service receiver).

2. Implicit in this service tax demand is an assumption that the relationship between Central Government and the State Government is an equivalent of a relationship between principal and the agent. This assumption is questionable as under administrative arrangement, State Governments are bound to implement the centrally sponsored schemes on receipt of a grant. The fact that State Governments are implementing agencies for the Central Government within the framework of CSS does not make them service providers. Consequently, Central Government cannot be taken as service receiver. Grant released by the Central Government under a centrally sponsored scheme cannot be presumed as consideration for providing a taxable service.

3. Levy and collection of service tax on State Government agencies/ departments implementing CSS under a central grant, is not legally tenable and therefore in such cases service tax should not be demanded.

4. Trade Notice/Public Notice may be issued to the field formations.

5. Please acknowledge receipt of this Circular. Hindi version follows.

8.4. We observe that the above Circular categorically *clarified that* Levy and collection of service tax on State Government agencies/ departments implementing Centrally Sponsored Scheme under a central grant, is not legally tenable and therefore in such cases service tax should not be demanded.. We observe that eventhough the Appellant cited the Circular in their reply to the Notice, the adjudicating authority has not given any finding regarding the applicability of this circular in this case. We observe that this clarification clearly covers the Appellant's case. Relying on the Circular, we hold that the demand confirmed in the impugned order on this count is not sustainable and accordingly, we set aside the same.

8.5. Regarding the service tax demand on the amount received in respect of Imparting IT Education under Rajiv Gandhi Computer Literacy Programme in Schools of Assam, we find that the amount has been collected by the Appellant for implementing the Central Govt. sponsored scheme under Rajiv Gandhi Computer Literacy Programme. The Appellant cited the *Circular No. 125/7/2010-ST issued under F.No. 354/35/2010-TRU dated 30.07.2010' wherein it has been clarified that* Levy and collection of service tax on State Government agencies/ departments implementing Centrally Sponsored Scheme under a central grant, is not legally tenable. We find that the contents of the Circular are squarely applicable in this case. Relying on the Circular, we hold that the demand confirmed in the impugned order on this count is not sustainable and accordingly, we set aside the same.

8.6. Since the demand of service tax is not sustainable on the above three categories of services mentioned above, the demand of interest and penalty is also not sustainable. Accordingly, we set aside the same.

9. In view of the above discussion, we set aside the demands confirmed in respect of the activities mentioned at (a), (b) and (c) in Para 4 supra. The impugned order is modified to that extent and the appeal is disposed on the above lines.

(Dictated and pronounced in the open Court)

Sd/-
(Ashok Jindal)
Member (Judicial)

Sd/-

(K. Anpazhakan)
Member (Technical)

Tushar Kr.