

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

REGIONAL BENCH – COURT NO.2

Service Tax Appeal No. 76055 of 2016

(Arising out of Order-in-Appeal No. 41/SH/CE(A)/GHY/2016 dated 14.04.2016 passed by Commissioner (Appeals), Customs, Central Excise & Service Tax, Guwahati.)

Shri Parimal Bhattacharjee,

(Mazumdar Lane, Panchayat Road, Dist.-Cachar, Pin-788005, (Assam.)

..Appellant

VERSUS

Commissioner of CGST & Central Excise, Shillong,

Morelow Compound, 110 M.G. Road, Shillong-793001.

..

...Respondent

APPEARANCE :

Shri Devraj Sahu, Advocate for the Appellant

Shri A. K. Choudhary, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. R. MURALIDHAR MEMBER (JUDICIAL)

HON'BLE MR. RAJEEV TANDON MEMBER (TECHNICAL)

FINAL ORDER No...77165/2024

DATE OF HEARING : 20.09.2024

DATE OF DECISION : 20.09.2024

PER R. Muralidhar:

The appellant is engaged in providing canteen services to ONGC at their Drilling site in the Two Rigs crew and Two Installations at Adamtilla GCS and Basakandi EPS. This service was in terms of the Contract Agreement awarded to by ONGC to the appellant by way of their letter No.9010012109 dated 23.10.2009. As per this Contract, all the infrastructure facilities, furniture, refrigerators, air-conditioners, materials required for preparation of food etc would be provided by ONGC and the appellant is required to prepare tea, coffee, snacks and meals as per the menu decided and provide to the employees of ONGC as per the rates specified by ONGC. On the

Service Tax Appeal No. 76055 of 2016

allegation that the appellant has provided 'Outdoor Catering Service' a Show Cause Notice was issued for the period 2009-10 to 2010-11 on 24.10.2014, by invoking the extended period provisions. The appellants submitted that they are merely carrying out the cooking and other allied activities based on the materials supplied by the ONGC and hence are not covered under the service of 'outdoor catering services'. The Adjudicating authority after following the due process confirmed the demand. On appeal, the Commissioner (Appeals) has dismissed their appeal. Being aggrieved, the appellant is before the Tribunal.

2. The learned Advocate appearing on behalf of the appellant takes us through the Agreement No.9010012109 dated 23.10.2009 between ONGC and the appellant annexed at Page No.11 to 49 of the Appeal papers. He submits that the canteen services are provided by the appellant at the Drill Site Accommodation [DSA] and Drill Sites installations of ONGC. The details of the work to be carried out, the quality to be maintained, duties and responsibilities of the contractor, catering services to be provided at DSA at Two Rigs and Two Installations, time of supply of tea, breakfast, snacks, lunch, dinner, midnight refreshments, menu for such supplies are all decided by ONGC. They also provide the required infrastructure and materials required for preparation of these items. The appellant is required to prepare the items and supply the same to the employees as per the

Service Tax Appeal No. 76055 of 2016

schedule given. Therefore, the appellant submits that they do not fall within the category of outdoor catering services.

3. He relies on the case law of **Rajeev Kumar Gupta Vs CCE Jaipur – 2009 (16) STR 26 (Tri-Del)**, wherein it has been held when only preparation and serving of the food is undertaken when all the required items are supplied by the client, the same would not amount to 'outdoor catering service'. In view of the above submissions, the appellant prays that the appeal may be allowed on merits.

4. He further submits that he had no intention to evade Service Tax payment. Since the appellant was only carrying out limited activity of cooking the food and serving the employees in the premises of ONGC with the infrastructure and all the items being provided by them, he carried a bonafide belief that no Service Tax payment is required. Further, it is on record that he has not collected any amount separately from ONGC towards the Service Tax. Thus neither he has charged any Service Tax nor has he paid the same. The details of the value of service rendered to ONGC have been gathered from the IT Returns and Form 26 AS, which shows that he has not concealed any transaction and has filed the Income Tax Returns properly accounting for all the receipts from ONGC. Hence, he submits, no case has been made out by the Dept. towards the suppression. Hence, he prays that the appeal may be allowed even on account of time bar.

Service Tax Appeal No. 76055 of 2016

5. The Learned AR reiterates the findings of the lower authorities. He submits that only after scrutiny of the Income Tax Returns, the Revenue came to know about the activities of the appellant, who has neither taken the Service Tax Registration, nor paid the Service Tax. Hence, he justifies the confirmed demand.

6. Heard both the sides and perused the Appeal papers and other documents.

7. On going through the contents of the Contract awarded by ONGC, it gets clarified that they are supplying the entire required infrastructure, materials required towards cooking, furniture, utensils. They are also specifying the quality to be maintained and regulating the food supply time and menu. Thus the activity of the appellant gets confined to cooking as per the specification and supplying the same to the employees of ONGC. The rates are fixed by ONGC. It is not a case where the appellant is using his materials for food preparation and supplying at a particular rate to ONGC. Therefore, it is not case of outdoor catering service, wherein the appellant provides the food with his own materials and infrastructure.

8. The Tribunal in the case of **Rajeev Kumar Gupta Vs CCE Jaipur – 2009 (16) STR 26 (Tri-Del)** has held as under:

"4. Learned DR relies on the decision of the Tribunal in the case of Raj Kumar Jain v. C.C.E., Jaipur-I reported in [2009 \(13\)](#)

Service Tax Appeal No. 76055 of 2016

S.T.R. 154 (Tribunal) = 2008 (89) RLT 100 (CESTAT-Delhi) wherein for the period prior to 16-6-05, the supply of food and beverages by the caterer at the premises of M/s. EID Parry and after preparing the said food beverages in the premises given by the company was held to be subject to service tax as outdoor caterer.

5. We have carefully considered the submissions from both sides. In the present case, on perusal of the agreement, we find that the entire facilities relating to maintenance of canteen including furniture, utensils, and also gas, electricity have been provided by the company itself. The appellant has engaged himself merely in preparation and serving the food items at the company premises. The above aspects have not been appreciated by the authorities below. The activities undertaken by the appellant cannot be held to fall under the category of outdoor catering service. The facts of the case in Raj Kumar Jain cited supra are entirely different and hence the said decision can not be applied to the facts of the present case”

[Emphasis supplied]

9. The Tribunal in the case of **Sai Food Services Vs CGST Navi Mumbai vide Final Order No.A/85938/2020 dated 07.02.2020** has held as under :

Brief facts of the case are that the appellant is inter alia, engaged in providing the taxable service under the category of 'Outdoor Caterer' to various corporate entities. In the present case the appellant had entered into an agreement with M/s. Ceat Ltd., whereby the appellant was required to run a canteen in their factory premises. As per the terms of agreement, the appellant was responsible for providing the manpower for serving and preparing food for the employees within the factory premises and elsewhere as and when required. For the period 01.07.2012 to 22.10.2013, the appellant had charged and collected service tax on the said service and deposited the same with

Service Tax Appeal No. 76055 of 2016

the Central Government account. However, during the disputed period from October 2013 to March 2016, the appellant did not collect the service tax from the client and also did not deposit the same into the government exchequer. Non-payment of service tax was owing to the reason that serving of food by a canteen maintained in a factory was exempted from payment of service tax in terms of Notification No. 25/2012-ST dated 20.06.2012 read with the Notification No. 14/2013-ST dated 22.10.2013.

6.....On reading of entry 19A in the notification dated 22.10.2013, it reveals that the canteen maintained in a factory has been provided with the exemption from payment of service tax. The said notification nowhere specified that canteen maintained by or run by the factory can only be considered for the benefit of such exemption. Thus, irrespective of the person, who maintains the canteen in a factory, the service tax exemption as per Entry 19A is available to such person and the benefit cannot be restricted to the owner of the factory alone. In the present case, since the appellant had provided the services of serving food and maintaining the canteen located in the factory, belonging to M/s. Ceat Ltd., the benefit of service tax exemption as per the above referred notification should be available to it.

[Emphasis Supplied]

10. Considering the factual matrix and the decision of the Tribunals in the above case laws, we hold the confirmed demand on the appellant is not sustainable on merits. Hence we set aside the impugned order and allow the appeal on merits.

11. We also see merit is the argument of the appellant that no specific points have been brought out in the Show Cause Notice that the appellant has evaded the Service Tax payment intentionally. The data towards their total service value has been gathered from the ITR

Service Tax Appeal No. 76055 of 2016

Returns filed by the appellant and the details gathered from ONGC. The appellant has neither charged the Service Tax nor has he collected the same from ONGC. The mere fact that the Agreement speaks that all taxes '*shall be borne*' by the appellant, cannot by itself be construed as amount of consideration being received as '*inclusive of service tax*' to conclude that Service Tax is being charged and recovered by the appellant. The fact that the Delhi Bench in the cited case has held that no Service Tax is payable on similar activities fortifies the appellant's bonafide belief that no Service Tax is payable. Therefore, we do not see that any case of suppression with an intent to evade has been made out against the appellant. Hence, we set aside the impugned order even on account of limitation.

12. Thus the appeal succeeds both on account of merits and on account of time bar. The appellant would be eligible for consequential relief, if any, as per law.

(Dictated and pronounced in the open court)

Sd/-
(R. Muralidhar)
Member (Judicial)

Sd/-
(Rajeev Tandon)
Member (Technical)

Tushar Kr.