IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL WEST ZONAL BENCH AT MUMBAI

APPEAL NO.ST/87483/2018

(Arising out of Order-in-Appeal /Original No.NGP-II/APPL-11/2017-18 dated 07.03.2018 passed by The Commissioner, CGST & Central Excise, Nagpur)

NRB INDUSTRIAL BEARINGS PVT. LTD : **Appellant**
Plot No/B-18, MIDC
Shendra, Aurangabad

VS

CCE & ST, AURANGABAD : **Respondent**
N-5, Town Centre,
CIDCO, Aurangabad
Maharashtra - 431 030

Appearance

Shri Pradeep Korde, Consultant for Appellant

Shri Sudhir B. Mane, AC(AR) for Respondent

CORAM:

Hon'ble P. Anjani Kumar, Member (Technical)

FINAL ORDER NO.A/86379/2019

Date of hearing : 07.08.2019
Date of decision : 07.08.2019

Per : **P. Anjani Kumar, Member (Technical)**

This is an appeal directed against Order-in-Appeal No.NGP-II/APPL/11/2017-18 dated 19.03.2018 passed by Commissioner of GST and Central Excise Nagpur II. The Appellants are engaged in manufacture of ball / roller bearings. A Show Cause Notice was issued alleging that they were availing services of their director namely Shri D.S. Sahney and were paying remuneration for the same and they are liable to pay Service Tax on the remuneration paid to the director under Reverse Charge Mechanism. The Show Cause Notice was confirmed by the lower authority. On an appeal filed by the Appellants Commissioner Appeals has confirmed the Service Tax on the remuneration paid in excess of the salary reflected as per Form 16.

2. Learned Counsel for the Appellants submits that the amount has been paid to the Managing Director as salary and is exempted from Service Tax in terms of Section 65 (44) (b) of Finance Act, 1994; Form 16 indicates the taxable amount arrived at after deducting eligible heads; the worksheet for calculation taxable income indicates with the gross salary of the Director to be of Rs.1,61,45,092; as per the resolution of the board this is the amount paid as salary to the Managing Director. Learned Counsel for the Appellants further submits that Managing Director of the company is performing routine management functions physically and is paid salary for the same; therefore the Managing Director and the Company have a employee and employer relationship; the Appellants have also issued TDS Certificates to Shri D. S. Sahney; the lower authorities have simply confirmed the duty demanded in terms of notification 30/2012 as amended by 45/2012 and have conveniently overlooked the employer -employee relationship. Counsel further submits that vide circular 115/09/2009 – ST dated 31.07.2009, CBEC clarified that the Director / Managing Director, whether he is whole time or otherwise, when being compensated for his performance could not be liable for Service Tax. The intention of

the government is to levy Service Tax on the management consultancy provided by the directors of the company and not on the remuneration paid to them; it is clear that Service Tax is to be levied on the sitting fee paid to the directors who are not performing routine functions but only provide advice / consultation to the management. He relied upon the cases of Rent Works India Pvt. Ltd. 2016 (43) STR 634 (Tri. Mum) and Meekin Transmission Ltd 2009 (238) ELT 554 (ALL). He further submitted additional written submissions dated 22.01.2018.

3. Learned Authorised Representative appearing for the department reiterated the findings of the OIA.

4. Heard both sides and perused the records of the case. We find that as per Section 65(44) of the Finance Act, 1994, "service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include:

(a) an activity which constitutes merely,

(i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner, or

(ii) a transaction in money or actionable claim;

(b) a provision of service by an employee to the employer in the course of or in relation to his employment;

(c.) fees taken in any Court or tribunal established under any law for the time being in force.

4.1 I find that as per the Memorandum of Articles of Association, Shri D.S. Sahney is appointed as Managing Director and salary is being paid to him as per the Memorandum and Articles of Association. The board resolution dated 04.10.2012 clearly indicates the appointment of Shri D.S. Sahney and the amount payable to him as salary and perquisites like house allowance, electricity and furnishings for the accommodation, leave travel concession, re-imbursement of medical expenses for self and family, medial / accident insurance, club fees, car with driver, telephone at residence etc. I also find that in the Form 31 and Form 25C, which is required to be filed under company's act before the Registrar of Companies, the name of Shri D.S. Sahney is shown as Managing Director and salary and perquisites payable or paid to him are also mentioned. I find force in that Appellants claim that only due to the fact that taxable income is shown in Form 16, it cannot be said that other perquisites are not part of remuneration to the employee and are paid for consultation etc. rendered by him. No case is made out by the department that such remuneration, other than salary paid to him, was not for the routine work he performs as Managing Director, but was for the consultation he provides. Therefore, the instant case is squarely covered by the exclusion contained under Section 65(44) (b) of Finance Act, 1994. I also find strength from the case law cited by the Appellant and also the case of Allied Blenders and Distilleries Pvt. Ltd. Vs. CCE ST Aurangabad 2019 (24) GSTL 207 (Tri.Mumbai). In view of the above, I find that the Impugned Order is not maintainable.

5. In the result the impugned order is set aside and appeal is allowed with consequential relief, if any, as per law.

(Order Dictated & pronounced in open Court)

(P. Anjani Kumar*)*
Member (Technical)

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