
(2008) 10 RAJ CK 0021
In the Rajasthan High Court

Central Office Mewar Palace Org.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 13-10-2008

Acts Referred:

Citation : (2008) 12 STR 545 : (2009) 21 VST 56

Hon'ble Judges : N.P. Gupta, J;Kishan Swaroop Chaudhari, J

Bench : Division Bench

Final Decision : Allowed

Judgement

N.P. Gupta, J.—This appeal has been filed by the assessee seeking to challenge the impugned orders of the Tribunal, so also of the authorities below. The appeal was admitted vide order dated 14-2-2007, on the following substantial question of law:

Whether in the facts and circumstances the claim to refund of service tax which has been paid in excess wrongly could have been refused?

2. The necessary facts are, that the assessee voluntarily deposited certain amounts with the department, purportedly representing service tax on different services, which were charged by the assessee from its sister concerns/clients, for the period September 1999 to May 2000. Realising that those services were not chargeable to service tax, the assessee issued credit notes with respect to the entire amounts to its concerns/clients, and lodged a claim for refund on 24-11-2000, for a sum of Rs. 3,40,040/-, which was subsequently revised on 18-12-2000 to Rs. 3,36,980/-.

3. The learned Assistant Commissioner issued show cause notice to the assessee, calling upon, as to why the claim for refund be not rejected, as the assessee has not produced the evidence to establish justification of the claim. This notice was replied to the effect, that they would furnish original invoices raised on account of non-taxable services, and the original debit/credit notes raised in favour of the clients, and evidence regarding payment received only for the balance amount

after adjustment of such credit notes.

4. However, the learned Assistant Commissioner found, that the representative of the company, who appeared showed credit/debit notes issued to their clients/sister concerns, but could not produce invoices, details/evidence of value, ascertained for non-taxable/taxable services. With this, it was also found, that the assessee-company as a whole is registered, and has been depositing service tax, which covers all taxable services rendered by the company to its clients, and that the main purpose of carrying on the operations of the company is to centralise all the professional functions in a totally de-centralised environment, through recruiting the professionals who are expert in the particular field. The learned Assistant Commissioner also found, that the assessee did not furnish complete details and evidence relating to refund claim to verify amount claimed by the assessee. The claim and documents did not show as to how they arrived at the value of non-taxable services, and that mere production of statement showing value of unit-wise taxable services and services, which are non-taxable services cannot be considered authentic/genuine document, for the purpose of granting refund. It was also found, that nowhere the evidence produced by the assessee establish, that the service tax collected by them has not been virtually passed on to their clients/customers, and thus, it was observed, that incidence of burden has been passed on to the clients/customers, apart from the fact that assessee has collected tax without authority of law for non-taxable services, and by merely raising credit notes, does not authorise the assessee to claim refund. Thus, the prayer for refund was rejected.

5. The appeal against this order was filed, which was dismissed by the Commissioner, by adopting an entirely different process of reasoning, viz. that all the services with respect to which the service tax was charged are included under the head "Manpower Recruitment Agency" and "Security Services" and that they are covered by the definition of "Management Consultant". Thus it was found, that the services were taxable, and the appeal was dismissed. It may be observed, that contention of the learned Counsel for the appellant was, that all necessary documents been produced before the learned Assessing Officer.

6. The matter was carried in further appeal before the learned Tribunal, and surprisingly, the Tribunal dismissed the appeal by adopting yet different reasoning, viz. that since the assessee had not challenged the assessment order, the claim of refund cannot be entertained, so as to indirectly challenge the assessment order, without filing statutory appeal, against the assessment order. It was also found, that in the case in hand, the order is appealable and no appeal having been filed, the claim of refund has no merit, and the appeal was dismissed.

7. We have heard learned Counsel for the parties, and have gone through the relevant provisions of the Finance Act, 1994, enacting provisions for levy of service tax, so also the relevant provisions of Central Excise Act, as well.

8. At the outset, it may be observed, that under the scheme of things, starting from Section 73 onwards it is clear, that the assessee himself is to deposit service tax in form ST-3, there is no provision for assessment. Passing of assessment order is contemplated only in cases where the notice is issued u/s 73, and it is found, that service tax is not levied or paid, or has been short levied or short paid etc. In that view of the matter, the very basis/reasonings given by the learned Tribunal, simply have no legs to stand. Admittedly, the appeal u/s 85 lies against a specific order of the concerned authority in Form ST-4, which requires to disclose, designation and address of the officer passing the decision or order appealed against, and the date of decision or order, so also the date of communication of the decision or order appealed against to the appellant. Admittedly, when no order capable of being appealed against, had ever been passed, it cannot be said that the assessee could file appeal against the assessment order, and not having so filed appeal he cannot lay the claim of refund. Thus, the order of the Tribunal cannot sustain.

9. Then so far as the reasonings adopted by learned Commissioner are concerned, the learned Counsel for the appellant has invited our attention to Annex. 4, another order of the same authority, being Commissioner dated 30th September 2005, passed in the case of the assessee itself, for the subsequent period April 2000 to March 2002, wherein it has clearly been held, that all these services as cataloged in the said order are not chargeable to service tax. And consequently the proceedings initiated against the assessee, wherein the adjudicating authority had demanded tax, were set aside, and the proceedings were dropped. It is not shown, that this order dated 30-9-2005 has, at all been appealed against, nor has it otherwise been shown to be wrong. In that view of the matter, the reasonings given by the learned Commissioner, in the order Annex. 2, also cannot sustain.

10. Then remains the order Annex.1, which proceeds on the basis, as quoted above, while according to the learned Counsel for the appellant, all relevant and necessary documents had been shown in original, and photostat copies were produced on record, but they have not been looked into.

11. In that view of the matter, the question as framed is required to be answered against the Revenue, and in favour of the assessee, but at the same time, the relief which we are inclined to grant is, only to the effect, that while setting aside the orders Annex. 2 and 3, we remit the matter back to the Commissioner (Appeals-II), Central Excise and Customs, Jaipur, to restore the appeal to its original number, and adjudicate the claim of the assessee afresh, in accordance with law, keeping in view the observations made above, and also keeping in view the order passed by the said Commissioner dated 30-9-2005, in the case of the assessee itself. The Commissioner is also directed to decide the appeal expeditiously.

12. The appeal is accordingly allowed.

13. The orders of the Tribunal and the Commissioner are set aside and the matter is remanded as above.