(2015) 11 CESTAT CK 0008

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 2471 Of 2012

Deepak & Co. APPELLANT

Vs

C.C.E., New Delhi RESPONDENT

Date of Decision : 06-11-2015

Acts Referred:

Finance Act, 1994 — Section 76, 77

Citation : (2015) 11 CESTAT CK 0008

Hon'ble Judges : G. Raghuram, J;R. K. Singh, Technical Member

Bench : Division Bench

Advocate : Saurabh Bhutra, K. Poddar

Final Decision : Allowed

Judgement

1. Heard the Id. Counsel for the appellant and the Id. A.R. for Revenue.

2. Appeal is preferred against the order dated 18.5.2012 passed by the Id. Commissioner (Appeals), Delhi II confirming service tax demand of

Rs.6,04,130/-, apart from interest and penalties under Section 76 and 77 of the Finance Act, 1994 as assessed by the primary adjudication authority

vide order dated 16.5.2011.

3. Under an agreement with the Indian Railway Catering and Tourism Corporation Ltd. (IRCTC), the appellant was licensed to provide certain

specified services on trains, i.e. supply of bed rolls to passengers, cleaning of coaches/toilets and the like services. For rendition of such services

during January 2009 to September 2009, appellant received consideration from IRCTC.

4. Proceedings were initiated by the show cause notice dated 13.4.2010 alleging that the appellant provided support services of business or commerce;

failed to obtain registration, file returns or remit the tax due on the consideration received for providing such services. After due process of enquiry,

the proceedings culminated in the primary adjudication order dated 16.5.2011. The primary authority confirmed the demand by classifying the services

provided as support services of business or commerce.

5. Aggrieved, the appellant preferred an appeal which was however disallowed by the impugned order passed by the Id. Commissioner (Appeals). In

para 12 of the impugned order, the lower appellate authority clearly recorded a finding that services provided by the appellants do not fall within the

category of support services for business or commerce. As a consequence of this finding since the proceedings were initiated only on the allegation

that appellants had provided services of support of business or commerce, the proceedings should have been dropped. However, the lower appellate

authority proceeded to analyze the nature of the services and concluded that the appellant had provided business auxiliary service and confirmed the

demand assessed by the primary authority.

6. Since the demand was confirmed by the impugned order on a class of taxable service which was not alleged in the show cause notice, the demand

cannot be sustained. In an identical fact situation and in respect of the same appellant as herein, for an earlier period, in Final Order No.52292/2014

dated 9.5.2014 in ST Appeal No.698/2012, this Tribunal quashed the order passed by the lower appellate authority therein.

7. For the reasons alike, the impugned order is quashed; the appeal is allowed. No costs however.