(2014) 06 CESTAT CK 0006

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 504 Of 2008

?M/s Rajasthan State Industrial Development And Investment Corp. Limited — APPELLANT

Vs

CCE, Jaipur-I — RESPONDENT

Date of Decision : 12-06-2014

Acts Referred:

Finance Act, 1994 — Section 65(12), 65(105)(zm), 75, 75A, 76, 77, 78, 80
Constitution Of India, 1950 — Article 266

Citation : (2014) 06 CESTAT CK 0006

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

Bench : Division Bench

Advocate : Sukriti Das, Amresh Jain

Final Decision : Allowed

Judgement

1. Rajasthan State Industrial Development & Investment Corp. Limited - the assessee/ appellant is aggrieved by the order dated 31.03.2008 passed by

the Commissioner, Central Excise, Jaipur-I. This order, pursuant to proceedings initiated by show cause notice dated 21.04.2006 confirmed service tax

demand of Rs.3,10,448/- out of a proposed demand of Rs.36,46,06,584/- and ordered recovery of this amount alongwith interest under Section 75 and

penalties under Sections 75A, 76, 77 and 78 of the Finance Act, 1994, for having provided taxable services.

2. In the show cause notice the appellant was alleged to have provided â??Real Estate Agentâ? service; â??Banking and other Financial Servicesâ?

and â??Technical Testing and Analysis/ Technical Inspection and Certificationâ? Services. The adjudicating authority dropped the demand in so far

as it pertained to â??Real Estate Agentâ?? service, being the substantive component of the proposed demand.

3. On â??Technical Testing and Analysis/ Technical Inspection and Certificationâ? Services, the confirmed demand is Rs.36370/-. Appellant admits

this liability. It however contended before the lower Authority that its local offices were asked to remit the service tax due under this category. That

was the only defence. Since there was no remittance of this amount either by the appellant or its local units, the demand under the adjudication order

to the extent of Rs.36,370/- is impeccable and is liable to be confirmed. Ld. Counsel for the appellant does not demur on this position.

4. A demand of Rs.2,74,078/- stands confirmed under â??Banking and other Financial Servicesâ?. The analyses leading to confirmation of the

demand under this head is set out in paragraphs 14 to 16 of the impugned order. Paragraph 14 sets out the definition of â??Banking and other

Financial Servicesâ? as provided in Section 65(12) of the Act; and enumerated to be a taxable service under Section 65(105)(zm) of the Act. In

paragraph 15, the Authority records that out of total demand of Rs.3,27,628/- proposed in the show cause notice as a levy on banking and other

financial services, the tax relatable to receipts of the appellant towards security deposit and earnest money forfeited, on its Real Estate dealings in

respect of land assigned to it by the Government of Rajasthan, are dropped. Demand of Rs.2,74,078/- is however confirmed on the basis of the

administrative charges received from the Government of Rajasthan.

5. The appellant is a Government of Rajasthan entity incorporated under the provisions of the Companies Act, 1956 with 100% share holding by that

Government (and engaged as its name and Memorandum of Association and Articles of Association suggest), to function as an agency and

instrumentality of the State to provide and augment industrial development and investment in the State.

6. The show cause notice, the response of the appellant there to; and the adjudication order (para 16) reveal that appellant, on directions of the State

Government raises loans on the strength of Bonds issued by it. Amounts so raised are required, under directions of the State Government, to be placed

in an interest bearing Public Deposit (PD) account of the appellant. These funds are to be deployed in accordance with directions issued by the State

Government. The repayment of funds raised by the appellant is guaranteed by the Government of Rajasthan. State Government however waived guarantee commission for providing the guarantee. Government has also undertaken to reimburse any interest deficit suffered by the appellant (being

the difference in the interest earned by it on funds raised and interest payable by the appellant to investors in the Bonds. There are other terms agreed

between the State Government and the appellant with regard to repayment of the principal, undertaken by the Government to reimburse the deficit

interest component in a timely manner etc.

7. The demand of Rs.2,74,078/- is on the administrative expenses reimbursed by the State Government to the appellant (at an agreed rate/ percentage

of loan raised and deposited in the appellantâ??s P.D. account).

8. Revenue assumed that the appellant had provided banking and other financial services to the State Government for which it received consideration

in the form of administrative expenses.

9. In para 16 of the impugned order, the learned Commissioner records that the administrative charges are disclosed as income/ receipts by the

assessee and that the appellant explained that these charges are reimbursed in relation to raising of loans by the appellant for the Government of

Rajasthan. The Authority infers that the appellant had acted as a financial intermediary for raising loans for the State Government by issuing Bonds,

since money/ loans so raised is to be deployed by the appellant as per directions of the State Government. On these premises the Authority concluded

that the appellant had provided auxiliary financial services and fund management services to the State Government, received remuneration under the

title of â??administrative expensesâ?? and therefore â??administrative expensesâ?? is consideration received for providing the taxable â??Banking and

other financial serviceâ??.

10. On a careful consideration of the activities of the appellant on the basis of the material on record, it is apparent that the appellant, an

instrumentality of the State raises loans from the public in its own name by issuing Bonds. The amounts so received are kept in a P.D. account of the

appellant. Since Bonds are issued by and in the name of the appellant and the amounts are kept in its own account and do not flow into the

Consolidated Fund of the State, as required under Article 266 of the Constitution, the activities of the appellant are clearly and truly a service to itself

and not to any other person/ entity. Administrative expenses reimbursed by the

Government of Rajasthan, on this analyses, are by way of a grant by

the State Government for the financial stability of the appellant which is an instrumentality of that State. It is therefore, clear that since the Bonds are

issued in its own name and funds so raised are deposited in the appellantâ??s own P.D. account, no rendition of a tanable service by the appellant to

the State Government occurs.

11. Section 65(12) of the Act defines this taxable service in sub-clauses (i) to (viii) of clause (a). It is conceded fairly by the learned DR that the

service provided by the appellant would clearly fall outside the ambit of sub-clauses (i) to (iv) and (vi) to (viii). Ld. DR however suggests that the

activity of the appellant might fall under sub-clause (v), this sub-clause enumerates certain specified components of this taxable service and reads

â??asset management including portfolio management, all forms of fund management, pension fund management, bank fund management,

custodial depository and trust services, but does not include cash managementâ??.

12. Paragraph 16 of the impugned order however seeks to justify the service allegedly provided by the appellant to the State Government, under sub

clause (vi). This sub-clause reads: advisory and other auxiliary financial services including investment and portfolio research and advice, advice on

mergers and acquisitions and advice on corporate restructuring and strategy. On application of ejusdem generis or the noscistur a socii principles,

applicable to multi component definitions as set out in sub-clause (vi), it appears to us that the scope of â??Banking and other Financial Servicesâ?, as

enumerated in sub-clause (vi) cannot be extended beyond the associational components specifically listed in the sub-clause. The inference by the

learned Commissioner that the appellant had provided advisory and other auxiliary financial services to the State Government is thus, misconceived.

13. In so far as the proposition that the appellantâ??s specified activity might fall within the ambit of sub-clause (v), we express our inability to accept

this proposition either. The appellant is raising funds by way of loans on issue of Bonds in its own name, which cannot be considered as managing the

funds of the State Government. The fact that the State Government guarantees repayment of loans by the appellant (under Bonds issued by it) would

not amount to issue of the Bonds by the State Government. The discipline of

Article 266 mandates that all loans raised by a State Government shall

form one consolidated fund to be called the Consolidated Fund of that State. Since clearly the funds received by the appellant consequent on the

Bonds issued by it and in its own name are required to be and are in fact deposited in the appellantâ??s P.D. account and not in the Consolidated

Fund of the State of Rajasthan, the Bonds cannot be construed to be Bonds issued by the State Government. If that be the reality of the transaction,

the expenditure incurred by the appellant would be expenditure incurred for servicing its own activity, of raising funds for its purposes though

reimbursed by the State Government, to the extent of the incurred administrative expenses. Such reimbursement, in our view would not amount to

payment of consideration for rendition of the tanable service, by the appellant to that Government.

14. On the aforesaid analyses, the demand for Rs. 2,74,078/- confirmed by learned Commissioner on the ground that the appellant had provided

â??Banking or other Financial Servicesâ??, cannot be sustained and is accordingly quashed.

15. In the result, the appeal is partly allowed confirming the demand of service tax to the extent of Rs.36,370/- alongwith proportionate interest. In so

far as the penalty leviable on the under remittance of the now confirmed tax of Rs.36,370/-, we hold that in the totality of the facts and circumstances

and given that the appellant is an instrumentality of the State and has deposited the entire confirmed Service Tax Demand of Rs.3,10,448/- and the

penalties confirmed under Sections 75A, 77 and 78 apart from the interest component, of Rs.1,54,109/- under Section 75, and since the substantive

component of the tax demand confirmed by the learned Adjudicating Authority stands reversed by us in this appeal, qua provisions of Section 80 of the

Act, we delete and set aside the penalties. Appeal is allowed to the extent above, but in the circumstances without costs.