(2024) 05 CESTAT CK 0031

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 42100 Of 2014

M/s. Salem District Lorry Owners Associations APPELLANT

Vs

Commissioner Of GST And Central Excise RESPONDENT

Date of Decision : 27-05-2024

Acts Referred:
Finance Act, 1994 — Section 65(105)(zzze), 65(105)(zzzzj)

Citation : (2024) 05 CESTAT CK 0031

Hon'ble Judges : Sulekha Beevi C.S., Member (J);Vasa Seshagiri Rao, Member (T)

Bench : Division Bench

Advocate : Ranchi Zone [2012 (26) STR 401 (Jhar.)] And In The Case Of M/S. Sports Club Of Gujarat Ltd. Vs. Union Of India [2013 (31) STR 645 (Guj.)]."

Final Decision : M/S. Ranchi Club Ltd. Vs. Chief Commissioner Of Central Excise And Service Tax

Judgement

Sulekha Beevi C.S., Member (J)

1. Brief facts are that the appellant is a trade body registered under the Society Registration Act and undertakes transportation of petrol / diesel for various oil companies like Indian Oil Corporation, Bharat Petroleum Corporation and Hindustan Petroleum Corporation. The appellant was issued Show Cause Notice alleging that they have not discharged appropriate Service Tax under Club or Association Membership Services, Supply of Tangible Goods Services, Business Auxiliary Services and Renting of Immovable Property Services. After due process of law, the Original Authority confirmed the demand, interest and imposed penalties. On appeal, the Commissioner (Appeals) upheld the same. Hence this appeal.

2.1 The Ld. Counsel Shri S. Sathianarayanan appeared and argued for the appellant. It is submitted that the appellant is an association and is registered under the Societies Registration Act. The Department has demanded service tax on the membership fees collected from the members. The appellant is not liable to discharge service tax on the subscription and entrance fees collected from the members as there is no service provider and service recipient relationship between the appellant to its members. The issue as to whether service tax can be demanded on the membership / entrance fee collected from members has been settled by the decision in the case of M/s. Ranchi Club Ltd. Vs. Chief Commissioner of Central Excise and Service Tax, Ranchi Zone [2012 (26) STR 401 (Jhar.)] and in the case of M/s. Sports Club of Gujarat Ltd. Vs. Union of India [2013 (31) STR 645 (Guj.)]. The said decision was applied by the Tribunal in the case of M/s. Erode Lorry Owners Association Vs. Commissioner of GST and Central Excise [Final Order No. 40368/2019 dated 21.02.2019]. It is prayed that the demand raised under Club or Association Services may be set aside.

2.2 In regard to the demand raised under Supply of Tangible Goods Services, it is submitted that the appellant has not supplied Lorries to the oil companies. The appellant has merely undertaken transportation of petrol / diesel of the oil companies to various places. The activity does not fall under Supply of Tangible Goods Services. In paragraph 4.3, the Original Authority has discussed that the appellant has received ?lorry freight? for the transportation undertaken by them. The freight charges have been subjected to levy of service tax at the hands of the service recipient. The oil company has discharged service tax under GTA services on the freight charges paid to appellant as a service recipient and therefore, the demand cannot be made on the appellant under Supply of Tangible Goods Services. It is prayed that the said demand may be set aside.

2.3 In regard to Business Auxiliary Services, the Ld. Counsel adverted to the discussion in paragraph 6.2 of the order passed by the Adjudicating Authority. It is submitted that the appellant does not purchase and sell the goods on behalf of the oil companies. They engage only in transportation of the goods of the oil companies. The view taken by the Department that the appellant is engaged in purchase and sale of goods on behalf of the oil companies and is doing promotion and marketing is entirely wrong. The demand made under BAS on the amounts accounted as discount, cash reward, uniform subsidy, pump standing fee and air gauge repair charges cannot be subject to levy of service tax under BAS. It is submitted that these are in the nature of reimbursable expenses as the charges are incurred by the appellant for verifying whether the vehicles are in proper condition at the time when they leave the depots. The demand under BAS cannot legally sustain. It is prayed that the same may be set aside.

2.4 In regard to the demand made under Renting of Immovable Property Services, the Ld. Counsel submitted that the amount is very low and would come within the threshold limit. The demand therefore cannot sustain. It is prayed that the appeal may be allowed.

3. The Ld. Authorised Representative Shri R. Rajaraman appeared for the Department. The findings in the impugned order was reiterated.

4. Heard both sides.

5.1 The first issue is with regard to the demand made under Club or Association Services. The said taxable service is defined under Section 65(105)(zzze) of the Finance Act, 1994 to read as ?any service provided or to be provided to its members, by any club or association in relation to provision of services, facilities or advantages for a subscription or any other amount?. The said definition was amended w.e.f. 16.05.2011 and reads as ?any service provided or to be provided to its members, or any other person, by any clubs or association membership service in relation to provision of services, facilities or advantages for a subscription of any other amount?. The relationship of a member with its association and vice versa is hit by the doctrine of mutuality. There is no service provider and service recipient relationship. The issue as to whether the subscription / entrance fees collected by the association from its members can be subjected to levy of service tax under the said category was considered by the Tribunal in the case of M/s. Ranchi Club Ltd. (supra). The Hon?ble Apex Court in the case of State of West Bengal Vs. Calcutta Club Limited [2019 (29) GSTL 545 (SC)] has also held that the demand of service tax cannot sustain. Following these decisions, we are of the view that the demand under this heading cannot sustain and requires to be set aside. Ordered accordingly.

5.2 The second issue is with regard to the demand made under Supply of Tangible Goods Services. Section 65(105)(zzzzj) of the Finance Act, 1994 defines the service as ?any service provided or to be provided to any person, by any other person in relation to supply of tangible goods including machinery, equipment and appliances for use, without transferring right of possession and effective control of such machinery, equipment and appliances?. In the present case, the appellant has provided transportation of goods to the oil companies. It cannot be considered as Supply of Tangible Goods Services. Even in the books, they have accounted the amount received by them as lorry freight. This indicates that the appellant has received freight charges for transportation and not hire charges. Further, the freight charges have been subject to service tax under the category of GTA services at the hands of the service recipients / oil companies. The Tribunal in the case of M/s. Erode Lorry Owners Association (supra) had considered the very same issue and held that the demand under Supply of Tangible Goods Services cannot sustain. The relevant paragraph of the decision of the Tribunal reads as under:-

“7. Coming to the tax liability on Supply of Tangible Goods, from the agreement and other facts on record it is evident that the contract was for transportation of petroleum products on which service tax under GTA has been discharged by M/s. HPCL themselves. The nature and type of arrangement between the two parties also service to indicate that there is no Supply of Tangible Goods involved in this matter. This being so, the demand made under this category also cannot be sustained and requires to be set aside. So ordered.”

Following the above decision, we are of the view that the demand under Supply of Tangible Goods Services cannot sustain and requires to be set aside. Ordered accordingly.

5.3 The Department has demanded service tax under BAS. In paragraph 6.2, it has been discussed by the Adjudicating Authority that the appellant is engaged in purchase and sale of goods on behalf of the oil companies and are receiving subsidies from them in the nature of discount, cash reward, uniform subsidy, pump standing fee and air gauge repair charges. It cannot be said that the appellant is engaged in purchase and sale of goods on behalf of the oil companies. The appellant is merely engaged in providing transportation of goods for the oil companies. The Show Cause Notice is not clear as to how this amount is to be treated as commission. We find that the demand under BAS cannot sustain and requires to be set aside. Ordered accordingly.

5.4 The quantification of the demand on various categories of service is given in paragraph 7 of the order passed by the Original Authority dated 24.01.2014. On perusal, it is seen that the taxable value under the category of Renting of Immovable Property Services for the period 2007-2008, 2008-2009 and 2009-2010 are below the threshold level. It is submitted by the Ld. Counsel that they have started paying service tax under Renting of Immovable Property Services w.e.f. 2011. The issue as to whether the demand under Renting of Immovable Property Services would come below the threshold limits has to be verified by the Adjudicating Authority. For this limited purpose as to whether the appellant would be eligible to avail the exemption from payment of service tax under Renting of Immovable Property Services for the reason of the taxable value under this category falls below the threshold limit is to be examined by the Adjudicating Authority. This issue is remanded to the Adjudicating Authority for the limited purpose of verification. In case, the amount is above the threshold limit, the appellant is liable to pay the service tax along with interest, and also the penalties in this regard for the respective period.

6. In view thereof, the impugned order is modified to the extent of setting aside of the demand of service tax, interest and penalties under Club or Association Services, Supply of Tangible Goods Services and Business Auxiliary Services. The issue with respect to Renting of Immovable Property Services is remanded to the Adjudicating Authority for verification as discussed above.

7. The appeal is partly allowed as above with consequential reliefs, if any, as per law.

