(2020) 12 CESTAT CK 0031

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 30883, 31206 Of 2016

M/s SHV Energy Pvt Ltd @Hash Commissioner Of Customs And Central Excise And Service Tax

Date of Decision : 09-12-2020

Acts Referred:
Finance Act, 1994 — Section 65(105)(zzzzj), 73(1), 75, 77, 78
Constitution Of India, 1950 — Article 366(29A)

Citation : (2020) 12 CESTAT CK 0031

Hon'ble Judges : P. Dinesha, J;P. Venkata Subba Rao, Technical Member

Bench : Division Bench

Advocate : Prakash Shah, V.R. Pavan Kumar

Final Decision : Allowed

Judgement

1. These appeals are filed against order-original No. HYD-SVTAX-000- COM-74 & 75-15-16 dated 30.03.2016. Heard both sides and perused the

records.

2. The appellants are engaged in trading LPG in bulk and also packaged in cylinders under the brand name â??super gasâ??. For bulk consumers

they entered into agreements for supply of gas and to help them receive gas the appellants supplied â??manifold/Super Gas system (SGS)â??

comprising bulk quantity of LPG cylinders; regulators, pig tails, primary piping, primary pressure regulator system etc. and installed them at the

customers premises. The appellants collected lease rental from the customers on monthly basis for the aforesaid manifold (SGS) system. During

verification of records of the appellants by officers, it appeared that they were liable to pay service tax on such monthly rentals under the category of

Supply Of Tangible Goods services (SOTG). Accordingly show-cause notices were issued to the appellant which were confirmed by the impugned order-in-original. Penalties were also imposed on the appellants under Section 77 & 78 by the impugned order.

3. The issue involved in these appeals is whether the lease rentals received by the appellants for the SGS system installed in the customers premises to

enable the customer to procure LPG in bulk quantities is liable to service tax under the category of â??supply of tangible goods serviceâ??.

Accordingly whether service tax needs to be charged on the appellant invoking extended period of limitation under proviso to Section 73(1) of the

Finance Act 1994 and whether interest should be charged under Section 75 of the Finance Act 1994 and whether penalties are imposable under

Section 77 & 78.

4. The appellant contested the taxability of lease rentals under the head Supply of Tangible Goods Service on the ground that the transaction involved

transfer of possession and control of the goods to the user of the goods and therefore is not covered by the definition of Supply of Tangible Goods

Service in terms of Section 65(105)(zzzzj) which reads as follows:-

â??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;

Learned counsel for the appellant submits that in terms of Article 366(29A) of the Constitution of India â??deemed saleâ? includes supply of goods

where the possession and control is transferred to the buyer and VAT is chargeable on such deemed sale of goods. If the effective possession and

control of the goods is not transferred to the customer, then it gets covered by Section 65(105)(zzzzj) of the Finance Act 1994 and is chargeable to

service tax. In their case they have transferred effective control and possession of the goods to their customers and therefore paid VAT on all their

transactions. Therefore, no service tax is chargeable from them. The departmentâ??s case is that the effective control and possession is not

transferred to the customers and therefore service tax has to be paid. He submits that for the subsequent period, learned Commissioner (Appeals) had

vide order-in-appeal No. HYD-SVTAX-HYC-APP-98-17-18 dated 12.01.2018 set aside the demand confirmed by the lower authorities on the same

alleged service. This order-in-appeal has been accepted by the department and therefore the issue has reached finality. For further subsequent period,

the Joint Commissioner himself has vide order-in-original No.11/2019-2020-ADG-NHYD-GST DATED 06.09.2019 has dropped the demand. This

order also has not been appealed against by the department. Therefore, the department cannot now take a different stand for the earlier period and

argued that effective possession and control have not been transferred to the customers and service tax is chargeable. He also demonstrated through

his invoices and statements that VAT has been paid by them in all cases as applicable.

5. Learned AR reiterates the findings of the lower authority. On a specific query from the Bench, learned AR has confirmed that the order-in-appeal

of the Commissioner (Appeals) and order-in-original of the Joint Commissioner for the subsequent periods have been accepted by the department and

have not been appealed against.

6. In view of the above, we find that the department cannot take a different stand for the earlier period for the same transactions. As the department

has accepted that effective control and possession have been transferred to the customers, no service tax can be levied under the head â??Supply of

Tangible Goods Serviceâ??. Both appeals are therefore allowed and the impugned order is set aside with consequential relief if any.

(Operative portion of the Order pronounced in open court on conclusion of the hearing)