**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
SOUTH ZONAL BENCH, CHENNAI**

COURT HALL No.III

SERVICE TAX APPEAL No.41404-41405 of 2013

(Arising out of Order-in-Appeal No.47 & 48/2013 (M-ST) dated 12.02.2013 passed by Commissioner of Central Excise (Appeals), 26/1, Mahatama Gandhi Road, Chennai 600 034)

M/s.VLCC Health Care Ltd. **...Appellant**
No.79, CP Ramaswamy Road, Alwarpet,
Chennai 600 018,
(Earlier – situated at 81, TTK Road,
Chennai 600 018).

Versus

The Commissioner of GST & Central Excise, **...Respondent**
Chennai North Commissionerate
No.26/1, Mahathma Gandhi Road,
Nungambakkam,
Chennai 600 034.

APPEARANCE :

Ms. R. Charulatha, Advocate
For the Appellant

Mr. M. Ambe, Deputy Commissioner (A.R)
For the Respondent

CORAM :

Hon'ble Ms. SULEKHA BEEVI, Member (Judicial)
Hon'ble Mr. M. AJIT KUMAR, Member (Technical)

DATE OF HEARING : 15.06.2023
DATE OF DECISION : 20.06.2023

FINAL ORDER No.40452-40453/2023

ORDER : Per Ms. Sulekha Beevi, C.S.

Brief facts are that the appellant is engaged in providing "Health & Fitness Services" and "Beauty Parlour Services" and are registered with Service Tax Department Commissionerate. It was noticed that the appellant was offering various slimming and beauty packages to their clients and such packages are priced on the basis of sessions / sittings required by the respective clients. The entire costs of these packages are collected in advance from their clients for the services that have to be provided subsequently. The service tax rates were revised from 8% and further revised to 12.24%. The appellant discharged service tax @ 8% for the disputed period. The allegation of the department is that the appellant ought to have paid service tax at the enhanced rate on the portion of services that were provided or to be provided after which the rates were revised. Show cause notices were issued for different periods proposing to demand service tax along with interest and for imposing penalties. After due process of law, the original authority confirmed the demand along with interest and imposed penalty. Against such order, the appellant filed appeal before Commissioner (Appeals) who vide OIA No.55/08 & 56/08 dated 29.09.2008 remanded the matter for re-quantification. In such *de novo* consideration, the demand was re-quantified as Rs.41,813/- & Rs.94,620/-. Against such order, the appellant filed appeals before the Commissioner (Appeals) vide impugned order herein upheld the same. Hence these appeals.

2. Ld. Counsel Ms. R. Charulatha appeared and argued for the appellant. It is submitted by the Ld. Counsel that rate of service tax levied for the said services were revised from 8% to 10.2% w.e.f 10.09.2004 and from 10.2% to 12.24% w.e.f 18.04.2006. The CBEC vide Circular No.65/14/2003-ST dated 05.11.2003 prescribed the procedure that has to be adopted in case of payment that was received in advance. The relevant para of the said circular reads as under :

> *"…..Thus, rule 6 (1)cannot be read in isolation. When read along with the provisions of the Act, it becomes clear that where the value of taxable service has been received in advance for a service which became taxable subsequently, service tax has to be paid on the value of service attributable to the relevant month/quarter which may be worked out on pro rata basis."*

3. It is the allegation of the department that the appellant ought to have paid service tax at the enhanced rate on that portion of the services that were provided or to be provided after which the rates were revised. Ld. Counsel submitted that the said circular has been withdrawn by the department. The circular clarifies about the payment of service tax on such service which becomes taxable subsequently. In the present case, the service provided by the appellant was already taxable and the appellant was discharging service tax. The rate of service tax only has been revised. The appellant is liable to pay the increased rate only @ 12.24% only from 18.04.2006. The period of dispute in the present case is from 10.09.2004 to 15.06.2005. The demand raised alleging that the appellant is liable to pay service tax at the enhanced rate w.e.f. 10.09.2004 cannot sustain.

4. Ld. Counsel relied upon the decision in the case of *Vigyan Gurukul v. CCE Jaipur* - 2011 (8) TMI 401-CESTAT DELHI. It is submitted that in the said case the Tribunal has referred to the Board's circular and after analysing the issue held that the assessee is not liable to pay the service tax on the advance payment received prior to 2011 as the liable to pay service tax was on receipt basis during the relevant period. She prayed that the appeals may be allowed.

5. Ld. A.R Mr. M. Ambe supported the findings in the impugned order.

6. Heard both sides.

7. The issue is whether the appellant is liable to pay service tax at the revised rate of 12.24% for the period prior to 18.04.2006. The authorities below have relied upon the Board circular (supra). On perusal of the circular, it is indeed clarified the situation of payment of service tax when the service becomes taxable subsequently. It does not talk about situation of enhancement or revision of service tax. The Tribunal in the case of *Vigyan Gurukul* (supra) had analysed the very same issue and observed as under :

> **"9.** What we notice is that the Circular 65/2003-ST was issued on 5-11-2003. At that time Section 65(105) defined "taxable service" to mean "any service provided" as defined in the said sub-section. With effect from 16-6-2005 the said sub-section was amended and thereafter taxable service means "any service provided or to be provided" as defined in the said sub-section. This amendment has very crucial relevance to the issue at hand and Revenue is relying on the circular issued in 2003 without taking this change in law into account.
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> **10.** For a harmonious construction of the relevant provisions it is necessary to quote them. They are quoted below :
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> '**65(105)** "taxable service" means any service provided or to be provided' - as defined in the various clauses.
>
> **"66. Charge of service tax** - There shall be levied a tax (hereinafter referred to as the service tax) at the rate of eight* per cent, of the

value of taxable services referred to in sub-clauses (a) …. ,…. ,… ,…..”

(this rate was increased w.e.f. 10-9-2004)

“**67.** For the purposes of this Chapter, the value of any taxable service shall be gross amount charged by the service provider for such service provided or to be provided by him”.

“68. Payment of service tax. - (1) Every person providing taxable service to any person shall pay service tax at the rate specified in Section 66 in such manner and within such period as may be prescribed.

(2) Notwithstanding anything contained in sub-section (1), in respect of any taxable service notified by the Central Government in the Official Gazette, the service tax thereon shall be paid by such person and in such manner as may be prescribed at the rate specified in Section 66 and all the provisions of this chapter shall apply to such person as if he is the person liable for paying the service tax in relation to such service.”

11. Considering the fact that Section 65(105) of Finance Act, 1994, defines taxable services including service to be provided and Rule 6 of Service Tax Rules prescribes payment of tax on consideration received during the calendar month without any reference to actual providing of service we are not able to agree with the point of view canvassed by Revenue.

12. We have also examined the Explanation in Rule 6(1). This explanation does not make any provision as to which rate of tax will apply in situation like the one at hand (whether that on date of receipt of value or that on date of providing service). This explanation says that the service provider need to pay tax only on that portion of value for which service tax has been provided. In the instant case the Appellant paid tax on the full value received. The department did not take any objection to such payment in advance. So at a later date when the rate went up, there is no reason for the department to turn around and say that the Appellant should not have paid tax in advance. So we do not find it proper to rely on this explanation to conclude that the rate of tax as prevalent at the time of providing service (This date itself is not a clear date in this case) will apply. We are of the view that during the relevant time the rate that was applicable at the time of receipt of value of service will apply in a case where the assessee chose to pay tax on the advance amount received.

13. We also take note that provisions in Rule 4(b)(ii) and Rule 9 of the new Point of Taxation Rules, 2011 as amended by Notification 25/2011-S.T., dated 30-3-2011 have the same effect as our conclusion. For convenience Rule 9 of the said Rules is reproduced below :

“**9. Transitional Provisions.** - Nothing contained in this sub-rule shall be applicable,-

(i) where the provision of service is completed, or

(ii) where invoices are issued prior to the date on which these rules come into force.

Provided that services for which provision is completed on or before 30th day of June, 2011 or where the invoices are issued up to the 30th day of June, 2011, the point of taxation shall, at the option of the taxpayer, be the date on which the payment is received or made as the case may be."

14. For the reasons explained above we allow the appeal with consequential benefits."

8. After considering the facts and evidence as well as the decisions cited above, we are of the considered opinion that the demand cannot sustain and requires to be set aside which we hereby do. Impugned order is set aside. Appeal is allowed with consequential relief if any,

(Pronounced in court on 20.06.2023)

sd/-
(M. AJIT KUMAR)
Member (Technical)

sd/-
(SULEKHA BEEVI, C.S.)
Member (Judicial)

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