

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

REGIONAL BENCH – COURT NO. I

Service Tax Appeal No. 41858 of 2014

(Arising out of Order-in-Appeal No. 94/2014 (P)(ST) dated 06.05.2014 passed by the Commissioner of Central Excise (Appeals), 26/1, Mahatma Gandhi Marg, Nungambakkam, Chennai – 600 034)

Shri K. Mayakrishnan

: Appellant

Contractor,
No. 209, Carpenter Street,
Sorathur & Post, Panruti Taluk,
Cuddalore District – 607 805

VERSUS

Commissioner of Central Excise and Service Tax

: Respondent

No. 1, Goubert Avenue,
Puducherry – 605 001

APPEARANCE:

Shri J. Shankarraman, Advocate for the Appellant

Shri N. Satyanarayanan, Assistant Commissioner for the Respondent

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 40964 / 2023

DATE OF HEARING: 22.09.2023

DATE OF DECISION: 31.10.2023

Order : [Per Hon'ble Mr. P. Dinesha]

This appeal is filed by the assessee against the Order-in-Appeal No. 94/2014 (P)(ST) dated 06.05.2014 passed by the Commissioner of Central Excise (Appeals), Chennai and the period of dispute is from April 2008 to March 2009.

2.1 Brief facts, which are relevant for our consideration, are that the appellant is a holder of Service Tax Registration for provision of certain services like 'Maintenance of Golden Jubilee Park' to M/s. Neyveli Lignite Corporation, Neyveli (hereinafter referred to as 'NLC'). It appears that during the disputed period, the appellant was awarded several contracts under different agreement numbers, for providing various services to different units of M/s. NLC. Based on statements furnished by M/s. NLC relating to the value of various services provided by the assessee and payments made to them, the Revenue entertained the view that the assessee had mainly provided services falling under the categories of management, maintenance or repair service, manpower supply agency service and commercial or industrial construction service which were taxable services with effect from 01.07.2003, 16.06.2005 and 10.09.2004 as per Section 65(105)(zzzg), Section 65(105)(k) and Section 65(105)(zzq) of the Finance Act, 1994 respectively and that the assessee had failed to pay the Service Tax by the due date, had contravened Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994, had failed to assess the Service Tax due correctly on the taxable services provided by them, had failed to file half-

yearly returns and had also contravened Rule 4A of the Service Tax Rules, 1994 inasmuch as they had failed to issue invoice, bill or challan within the prescribed time-limit.

2.2 Accordingly, Show Cause Notice No. 211/2009 dated 14.10.2009 came to be issued proposing to demand Service Tax on the taxable value for the taxable services provided by the assessee during the period 2008-09 under proviso to Section 73(1) of the Finance Act, 1994, along with applicable interest under Section 75 of the Act and penalty under Sections 76 and 77 *ibid*.

2.3 It appears that the assessee had filed a reply in writing vide letter dated 12.01.2010 stating that the Service Tax due as per the annexure to the Show Cause Notice for the period 2008-09 was paid, furnishing the GAR-7 challans (as mentioned at paragraph 3 of the Order-in-Original) and requested to drop the proceedings.

3. During adjudication, however, the original authority vide Order-in-Original No. 13/2013-ST dated 08.07.2013, has confirmed the demands, as proposed in the Show Cause Notice. In the adjudication order, while recording that the appellant had furnished acknowledged copy of S.T.-3 return for

the II-half of 2008-09 filed on 12.01.2010 indicating payment of Service Tax of Rs.39,451/-, the adjudicating authority has observed that the appellant had neither submitted the documents called for in the intimation letters nor furnished the copy of S.T.-3 return filed for the I-half of 2008-09 and thus, has proceeded to confirm the demand and appropriate the amount paid for the II-half of 2008-09.

4. Against the above Order-in-Original, the assessee preferred an appeal before the first appellate authority, but however, the Commissioner of Central Excise (Appeals), Chennai vide impugned Order-in-Appeal No. 94/2014 (P)(ST) dated 06.05.2014 rejected their appeal and upheld the order passed by the original authority.

5. It is against this order that the present appeal has been filed by the assessee before this forum.

6. Heard Shri J. Shankarraman, Ld. Advocate for the appellant and Shri N. Satyanarayanan, Ld. Assistant Commissioner defending the impugned order.

7. The grounds urged by the appellant could be summarized as under: -

- The Show Cause Notice does not allege the category under which the appellant is exigible to Service Tax.
- Only a person providing any taxable service as defined under Section 65(105) of the Finance Act is exigible to Service Tax for the consideration received and that too from specified dates.
- Unless a Show Cause Notice contains (a) category under which tax is proposed, (b) the nature of work that is carried out, (c) the work that is falling under such specific categories, (d) the applicability of the relevant provision and category, the entire proceedings are null and void.
- In the Show Cause Notice issued to the assessee, neither the narrative part nor the annexure where details of quantum of the demand is shown, specified the category of service under which demand is sought to be made.
- Other than merely stating that from the perusal of the statements given by M/s. NLC the services rendered by the assessee fall mainly under management, maintenance or repair

services, nowhere is there any allegation / charge as to the exact nature of the service provided by them attracted Service Tax under a specific category.

- In this regard reliance is placed on the following: -

i. Commissioner of C.Ex., Bangalore v. Brindavan Beverages [2007 (213) E.L.T. 487 (S.C.)]

ii. United Telecom Ltd. v. Commissioner of C.Ex., Hyderabad [(2011) 30 STT 305 (Bang. – CESTAT)]

- Apart from the above, the Show Cause Notice contains certain factual mistakes, i.e., "Amount received from NLC" mentioned in the annexure to the Show Cause Notice are not correctly stated by the Assistant Commissioner of Central Excise, Cuddalore.
- The taxable value of Rs.6,66,799/- is not the correct amount, which was the taxable value of service received during the year 2008-09 and also 2009-10. The assessee had received Rs.3,43,443/- as contract bill amount during the year 2008-09 for the contract agreement No. 092/RB/08-09.

8. *Per contra*, the Ld. Assistant Commissioner, supported the findings in the impugned order.

9. We have considered the rival contentions and we have gone through the documents/orders referred to during the course of arguments, and we find that the only issue to be decided by us is: whether the demand confirmed in the impugned order is sustainable in law?

10. A perusal of the Show Cause Notice makes it clear, and admittedly, that there is no specific service alleged against the appellant, as having been rendered by it, rather, a consolidated tax liability has been worked out, which makes it indefensible.

11.1 In this regard, it is relevant to note the decision of the Hon'ble Apex Court in the case of *Commissioner of Central Excise, Bangalore v. M/s. Brindavan Beverages* [2007 (213) E.L.T. 487 (S.C.)] wherein it has been categorically held as under: -

"10. There is no allegation of the respondents being parties to any arrangement. In any event, no material in that regard was placed on record. The show cause notice is the foundation on which the department has to build up its case. If the allegations in the show cause notice are not specific and are on the contrary vague, lack details and/or unintelligible that is sufficient to hold that the noticee was not given proper opportunity to meet the allegations indicated in the show cause notice. In the instant case, what the appellant has tried to highlight is the alleged connection between the various concerns. That is not sufficient to proceed against the respondents unless it is shown that they were parties to the arrangements, if any. As no sufficient material much less any material has been placed on record to substantiate

the stand of the appellant, the conclusions of the Commissioner as affirmed by the CEGAT cannot be faulted."

The demand in the impugned order, therefore, cannot sustain in the light of the law laid down by the Hon'ble Supreme Court.

11.2 Moreover, an identical issue has already been decided by this Bench of the CESTAT in the case of *M/s. T.M.P. Manoharan & Co. v. Commissioner of Central Excise, Puducherry* [Final Order No. 40962 of 2023 dated 30.10.2023 in Service Tax Appeal No. 41840 of 2014 – CESTAT, Chennai].

12. We do not find any case made out for us to take a different view deviating from the view expressed in the case of *M/s. T.M.P. Manoharan & Co. (supra)* and therefore, we are of the view that the demand in the impugned order cannot sustain, for which reason the same is set aside.

13. Resultantly, the appeal is allowed with consequential benefits, if any, as per law.

(Order pronounced in the open court on **31.10.2023**)

Sd/-
(M. AJIT KUMAR)
MEMBER (TECHNICAL)

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)

Sdd