

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH, COURT NO. 4**

SERVICE TAX APPEAL NO. 51304 OF 2018

[Arising out of Order-in-Appeal No. 07(RK)ST/JPR/2017-18 dated 18.01.2018 passed by the Joint Commissioner of Central Excise and Service Tax, Jaipur (Rajasthan)]

**RAJASTHAN STATE ROAD TRANSPORT
CORPORATION**

C Scheme,
Jaipur, Rajasthan.

Appellant

Vs.

**JOINT COMMISSIONER OF CENTRAL EXCISE
AND SERVICE TAX, JAIPUR**

Respondent

Appearance:

Present for the Appellant :S/Shri Sameer Sood and Jitin Mandovaria, Advocates
Present for the Respondent: Shri Rajeev Kapoor, Authorised Representative

CORAM:

**HON'BLE DR. RACHNA GUPTA, MEMBER(JUDICIAL)
HON'BLE Ms. HEMAMBIKA R. PRIYA, MEMBER(TECHNICAL)**

**DATE OF HEARING : 05/02/2024
DATE OF DECISION : 19/03/2024**

FINAL ORDERS NO. 55363 /2024

DR. RACHNA GUPTA

The appellant in the present case is registered for rendering of taxable service under the category of Tour Operator Service/ / Business Auxiliary Services / Renting of Immovable Property services/ services of sale of Space or time for advertisement / Business Support Services.

2. The department noted during audit of the appellant's record for the period 4/2010 to 3/2015 from the scrutiny of profit and loss account that under the head of Sundry Debtors E-55,

an amount pending against Government Debtors for canteen stall is Rs.11,12,48,118/- and Rs.2,20,73,890/- is in head of Private Debtors for casual contracts. Documents such as bills / invoices/ challans were issued against service provided by the RSRTC but same were neither included in the gross value of taxable services nor were shown in ST-3 Returns of the respective period by them. The appellant had also not deposited the service tax. Department formed an opinion that the appellant since had issued invoices/ Bills/ voucher to their service receiver in respect of the services provided to the respective parties but has not included the same in the gross taxable value of respective period nor has paid service tax deliberately; never disclosed the material facts of non inclusion of taxable value in respective months and non-payment of service tax thereon to the department. These facts came to the notice of the department only after audit of the records of the assessee was conducted by the AG audit, Jaipur. Had the audit not been conducted by the AG Audit, Jaipur, the fact of providing the taxable services and non-payment of service tax thereupon would not have come to the notice of the department and the liability of Service Tax would remain unearthed. Resultantly vide show cause notice No. 3987 dated 08.12.2016 Service Tax amounting to Rs.1,64,78,600/- was proposed to be recovered along with proportionate interest and the appropriate penalties. The said proposal has been confirmed

vide Order-in-Original No. 120/2016 dated 10.02.2017. Being aggrieved the appellant is before this Tribunal.

3. We have heard Shri Sameer Sood and Shri Jitin Mandovaria, learned Counsels appearing for the appellant and Shri Rajeev Kapoor, learned Authorised Representative for the department.

4. Learned Counsel for the appellant has submitted that the appellant has been established by Government of Rajasthan on 1.10.1964 under the **Road Transport Act 1950**. It has 5000 buses in its fleet and 56 depots across the State and 3 depots outside the State, i.e. Indore, Ahmadabad and Delhi. The State Transport Corporation is defined under clause 42 of section 2 of Motor Vehicle Act, 1988 'any service given to the State Transport Undertaking by way of giving on hire of the Motor Vehicle amount to carry passengers or exempted from service tax merely for the reason the appellant is not a merely business entity. The demand has wrongly been confirmed by the department. Reliance is placed on the decisions of Supreme Court in the case of **Commissioner of Central Excise, Chandigarh vs Pepsi Foods Ltd.**

Learned Counsel further mentioned the extended period has wrongly been invoked. Learned Counsel has submitted that Sundry Debts are sum total of value of services provided, for which the invoices are raised on customers, accounted for in the

books of accounts and payment against which is receivable on credit basis to be realized at a later date.

Hence, Sundry Debtors/ amounts realizable appearing in Balance Sheet cannot be treated as value of service for second time. There is no provision under the Act or Rules to disclose Sundry Debtors in the ST-3 Returns. Thus, the entire proceedings have been initiated without discussing the definition of Sundry Debtors / amounts realizable which are shown as fixed assets in Balance Sheet. The Appellant states that no service tax liability can be discharged or demanded on unrealized / notional income and relies upon the judicial precedent in the case of **Synergy Audio Visual Workshop (P) Ltd. [2008 (10) STR 578 (Tri-Bang)]**. The appeal is prayed to be allowed.

5. Per contra, learned Departmental Representative mentioned that there is no infirmity in the Order under challenge. The appellant is a commercially interest driven authority irrespective it is State Transport Corporation. The activity of taking vehicles on hire is for commerce and industry use. The appellants are rightly held liable to pay the service tax under reverse charge mechanism. The appeal is prayed to be dismissed.

6. Having heard the rival contentions, we observe that the proposed demand of Service Tax of Rs.1,64,78,600/- has been reduced by Commissioner (Appeals) to an amount of Rs.1,37,96,613/-, which has been confirmed alleging it to be the

non-released receivables (sundry) from various Government debtors and private debtors (sundry debtors). Sundry debtors has been defined under Finance Act, 1994. As per normal terms sundry debtors refer to businesses, individuals or companies receiving services or products from another company or business without making the payment immediately. The payment occurs on a credit basis, where the debtors are liable to pay the money in future, i.e. the money lent to the sundry debtors is expected to return in the business financials within a short period of time. Payments on some future date to the sundry accounts are considered as fixed assets in the business. We observe that the show cause notice is based upon the scrutiny of profit and loss account for the financial year 2014-15, wherein the amounts were found recorded to be recoverable from the Government as well as from the private debtors.

6.2 In the light of above discussions, we are of the opinion that the amounts mentioned in the balance sheet as profit and loss amounts as unrealized receivable from the sundry debtors cannot be considered as value of service. Apparently, there is no provision in the Act or the Rules to be disclosed as sundry debtors in the ST 3 Returns. Hence, we hold that demand cannot be confirmed by merely appreciating the difference between the profit and loss account / balance sheet and ST 3 returns. We draw our support from the decision in the case of **Synergy**

Audio Visual Workshop (P) Ltd. [2008 (10) STR 578 (Tri-Bang)] was also quoted in the above said decision.

5.1 The other ground is for confirming demands is that the appellants had shown certain amounts due from the parties in their Income Tax returns and Revenue has proceeded to demand Service Tax on this amount shown in the Balance Sheet. The appellants have relied on large number of judgments which has settled the issue that amounts shown in the Income Tax Returns or Balance Sheet are not liable for Service Tax. In view of these judgments, the appellant succeeds on this ground also. The impugned order is set aside and the appeal is allowed.

6.3 In the Final Order of the Bangalore Bench of this Tribunal in the case of **Indian Oil Sky Tanking Ltd. vs CST, Bangalore [2015 (38) STR 221(Tri-Bang)]** also it was held that it is the burden cast upon the department to show that the assessee has recovered the cost of service rendered. In the absence of such recovery, the question of levy of service tax does not at all arise. The book adjustment cannot be the ground to fix the liability. In another decision titled as **M/s. Indian Machine Tools Manufacturer Association vs Commissioner of Central Excise, Panchkula**, this Tribunal's Chandigarh Bench vide Final Order No. 60403/2023 has held that it is settled principles of law that service tax can be levied only when there is clear identification of the service provider and service recipient and consideration paid for the same. In the absence of such service recipient and service provided service tax cannot be demanded and confirmed.

7. In the present case, we observe that the Show Cause Notice as well as orders of the adjudicating authority have just appreciated the difference noticed between the amount mentioned in the profit and loss account and are mentioned in ST 3 returns of the appellant. Without appreciating the amount out of the impugned invoices to have been actually received by the appellant and without verifying as to whether the requisite services were finally being provided. Resultantly, we hold that order confirming such a demand is not sustainable.

8. Coming to the plea of the invocation of the extended period, it is already observed that the matter has originated based upon the latest audit of the appellants own record. The order merely state that had audit not been conducted the liability as confirmed qua the appellant could not have been ascertained, cannot be the ground for invoking the extended period of limitation. The primary responsibility for ensuring that the credit amount of service tax is paid, rests on the officers even in the regime of self-assessment as clarified by the CBEC in its manual for scrutiny of ST return.

9. We also observe that only plea of department is that alleged non-payment of service tax by appellant was revealed from the audit of its records. But this aspect is no more *res integra*, by virtue of decision of Hon'ble Supreme Court in the case of

Uniworth Textiles vs Commissioner of Central Excise, Rajpur reported as **[2013 (288) ELT 161 (SC)]**.

10. We further observe that there is a catena of judicial pronouncement to hold that suppression of facts should not merely the gross omission to pay the duty but it is an act clubbed with an intent not to pay the duty . Hon'ble Supreme Court in the case of **Pushpem Phrmaceuticals Ltd. Vs Collector of Central Excise, Mumbai** reported in **1995 (78) ELT 401** has held that without the intent to evade the duty being established the extended period of limitation cannot be invoked. There is no evidence found on record proving such intent / mensrea with the appellant to evade payment of service tax. The appellant have already been held not liable to pay the amount confirmed. Resultantly we hold that the department has wrongly invoked the extended period of limitation while issuing Show Cause Notice.

11. In the light of above discussion, the order under challenge is hereby set aside and the appeal is consequently allowed.

(Pronounced in the open Court on 19/03/2024)

**(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)**

**(HEMAMBIKA R PRIYA)
MEMBER (TECHNICAL)**