IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

STA No.21 of 2019 (O&M)
Date of decision: 21.02.2023

Principal Commissioner, CGST
.....Appellant

Versus

Punjab State Container & Warehousing Corporation (Conware)
.....Respondent

CORAM:HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Sharan Sethi, Senior Standing Counsel,
for the appellant.

Mr. Sandeep Goyal, Advocate,
for the respondent.

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Ritu Bahri, J.

The instant appeal, under Section 35 G of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994, has been filed against the final order dated 24.10.2018 (Annexure A-2) passed by the Customs, Excise and Service Tax Appellate Tribunal, Chandigarh, whereby appeal filed by the respondent has been allowed.

Brief facts of the case are that during the scrutiny of balance sheets and other service tax records, it was noticed that Punjab State Warehousing Corporation-respondent had entered into an agreement with M/s Gateway Districtparks Ltd., Mumbai (for short 'GDL') on 12.01.2007. The said agreement was effective from 01.02.2007 for a period of 15 years. The respondent had rented out to GDL the CFS located on plot along with all buildings and permanent structures etc. As per one of the conditions of the agreement, the recipient was required to pay Rs.35 crore lump-sum as upfront fee in advance to the respondent along with annual fee of Rs.10 crore. The respondent-corporation had initially received Rs.35 crore in January, 2007 as upfront fee from GDL for the entire period along with annual fee on quarterly basis. The respondent apportioned the upfront fee of Rs.35 crore in ten equal yearly parts and thus, reflected income of Rs.3.5 crore annually on this amount in their balance sheets. The respondent-corporation was paying service tax on annual fee of Rs.10 crore under the category of “Renting of Immovable Property Service” w.e.f. 01.06.2007. No service tax was paid on apportioned upfront fee received by the respondent-corporation. Therefore, a show cause notice was issued to the respondent and demand of service tax was made under the category of “Renting of Immovable Property Service.” The notice was adjudicated by the competent authority and demand of service tax along with interest was confirmed. Penalty was also imposed on the respondent.

Initially, Raigad Commissionerate had issued a show cause notice dated 11.10.2011 to the respondent on the ground that respondent-corporation had provided franchise service. The said notice was adjudicated and demand of service tax was confirmed. That order was challenged by the respondent before the Tribunal. The Tribunal remanded the matter to the adjudicating authority. After issuance of the said show cause notice, the impugned show cause notice had been issued to the respondent on 12.10.2012 demanding the service tax under the category of “Renting of Immovable Property Service” by invoking the extended period of limitation. While adjudicating the impugned show cause notice, the competent authority had held that the services rendered by the respondent-corporation did not fall under the category of "Franchise Service" whereas, the earlier show cause notice was issued to demand service under the category of "Franchise Service." Later on, the impugned show cause notice was issued to demand service tax under the category of "Renting of Immovable Property Service."

The Tribunal, after hearing learned counsel for the parties, allowed the appeal filed by the respondent-corporation on the ground that pursuant to the show cause notice dated 11.10.2011, the adjudicating authority had held that the service rendered by the respondent-corporation does not fall under the category of "Franchise Service." With regard to the impugned show cause notice dated 12.10.2012, the Tribunal has held that this notice has been issued for the same amount of Rs.35 crore, which was received by the corporation as franchise fee service for 10 years. Since the service rendered by the respondent did not fall under the category of "Franchise Service", the same demand of service tax issued in another show cause notice was against the principles of *res-judicata.* The revenue has challenged the order of the Tribunal by way of present appeal.

Learned counsel for the appellant-revenue, while referring to the order dated 30.04.2014 (Annexure A-5), has argued that the show cause notice dated 11.10.2011 was passed for the period from April, 2010 to March, 2011. Vide this order (Annexure A-5), three show cause notices were set aside. However, in the present case, the Tribunal has referred only one show cause notice dated 11.10.2011, which had been made basis for giving a finding of *res judicata.* He has further argued that in the present case, the impugned show cause notice is dated 12.10.2012, whereby demand of service tax of Rs.4,39,12,960/- for the period from 01.06.2007 to 31.01.2009 was raised. Hence, the period cover in this notice is from 2007 to 2009. However, notice dated 11.10.2011 was issued for the period from April, 2010 to March, 2011. Hence, the order passed by the Tribunal is liable to be set aside. Learned counsel for the appellant has further argued that as per the terms of the agreement dated 12.01.2007, the respondent-corporation has granted all the rights to GDL to operate, manage and carried out permissible activities from the Container Freight Station (CFS). This was to be carried out on an annual fee of Rs.10 crore to be paid in equal quarterly installments.

On the other hand, learned counsel for the respondent-corporation has argued that vide order dated 30.04.2014 (Annexure A-5), the authority has set aside three show cause notices dated 25.01.2011, 11.10.2011 and 10.10.2012 by observing that as per agreement dated 12.01.2007, the corporation is registered and assessed to service tax under "Renting of Immovable Property Services" at Chandigarh and the service tax has, accordingly, been paid for the relevant period. Since the service tax has already been paid at Chandigarh, the impugned show cause notices are liable to be set aside.

After hearing learned counsel for the parties, the present appeal deserves to be dismissed. After 12.01.2007, for the assessment of service tax on "Renting of Immovable Property", the respondent-corporation got registration at Chandigarh. Thereafter, entire service tax with respect to the amount of Rs.10 crore fee, had been deposited. No service tax was paid on the upfront fee of Rs.35 crore, as this amount had been accepted before the agreement dated 12.01.2007. In this backdrop, the show cause notices were issued on upfront fee on the Franchise Service by the Commissioner, Central Excise & Service Tax, Raigad Commissionerate to show cause as to why:-

(i) Service Tax amounting to Rs.1,43,45,418/- and Education Cess of Rs.2,86,908/- and Secondary and Higher Education Cess of Rs.1,43,454/-, totally amounting to Rs.1,47,75,780/- (Rupees one crore forty seven lakh seventy five thousand seven hundred eighty) as detailed in Annexure "A" to this notice for the period April, 2011 to March, 2012 should not be demanded & recovered from them under provisions of Section 73 (1) and 73 (1A) of the Finance Act, 1994.

(ii) Interest at appropriate rate should not be charged and recovered on amount payable under the provision of Section 75 of the Finance Act, 1994.

(iii) Penalty should not be imposed upon them under Section 76 and 78 of the Finance Act, 1994 for non payment of Service Tax due, which was liable to pay under Section 68 of the Finance Act, 1994.

(iv) Penalty should not be imposed for not obtaining the service tax registration and not filing the ST-3 Return in respect of Franchise Service under Section 77 of the Finance Act, 1994.

The above show cause notices were issued by the Raigad Commissionerate and Hence, this amount of Rs.35 crore, which was taken as Franchise Service, was dropped. Even, though the respondent-corporation was registered at Chandigarh, for the purpose of service tax, the Chandigarh Commissionerate had no jurisdiction to issue notice with respect to the franchise service of Rs.35 crore received by the respondent-corporation towards "Franchise Service." Keeping in view the above fact, the order dated 30.04.2014 (Annexure A-5) has been passed, whereby all the three show cause notices have been set aside.

Since the service tax with respect to Rs.10 crore fee (which was received by the respondent-assessee from M/s Gateway Districtparks Ltd., Mumbai) stands deposited, the issue with regard to aforesaid three show cause notices was rightly examined by the Raigad Commissionerate.

Now, the question for consideration is, whether same amount of

Rs.35 crore, which was received by the respondent-corporation at Mumbai before the agreement dated 12.01.2007, can be made basis to issue the impugned show cause notice dated 11.10.2011. The answer to this question would be in the negative, as the jurisdiction to issue this notice was with the Raigad Commissionerate, which had already set aside the notice vide order dated 30.04.2014 (Annexure A-5). Rather, apart from notice dated 11.10.2011, two more notices dated 25.01.2011 and 10.10.2012 have also been set aside. The above said three notices were issued for the period from January, 2007 to March, 2012. The argument raised by learned counsel for the appellant that the Tribunal has only observed with respect to the notice dated 11.10.2011, has no merit, because as per order dated 30.01.2014 (Annexure A-5), all the three notices have been set aside.

In view of the above discussion, no ground is made out to interfere in the impugned order as the same has been passed after appreciating the evidence in the right perspective. No substantial question of law arises for consideration in this appeal.

Resultantly, finding no merit, the present appeal is dismissed.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

21.02.2023
ajp

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No