

2011 (24) S.T.R. 372 (Tri. - Bang.)

IN THE CESTAT, SOUTH ZONAL BENCH, BANGALORE

Shri M.V. Ravindran, Member (J)

SAP LABS INDIA PVT. LTD.

Versus

COMMISSIONER OF C. EX., BANGALORE

Final Order No. 30/2011, dated 5-1-2011 in Appeal No. ST/169/2009

REPRESENTED BY : None, for the Appellant.

Shri K.S. Chandrasekhar, JDR, for the Respondent.

[Order]. - This appeal is filed against the Order-in-Appeal No. 312/2008 dated 24-11-2008, passed by the Commissioner of Central Excise (Appeals-II), Bangalore.

2. None appeared on behalf of the appellant despite notice for hearing. However, I find from the record that the appellant by letter dated 8-4-2010 had requested the Bench to decide the matter on merits.

3. On perusal of the records, I find that the appellant herein filed a refund application with the authorities on the ground that the service tax paid by them for the period prior to 13-2-2007 should not have been paid. While claiming refund, they have stated that they had paid service tax and as per reverse charge mechanism, they are not liable to pay service tax. The lower authorities issued a show-cause notice asking the appellant to show- cause as to why refund claim could not be rejected on various grounds including unjust enrichment. The adjudicating authority after following the Principles of natural justice, rejected the refund claim on various grounds, including the ground of unjust enrichment. Aggrieved by such an order, the appellant filed an appeal before the Commissioner (Appeals). The Commissioner (Appeals) concurred with the findings of the adjudicating authority as the appellant has not passed on the burden of unjust enrichment to its clients abroad. In the grounds of appeal, the appellant has reiterated that the services for which they paid service tax on reverse charge mechanism is totally performed outside India. It is the submission that Rule 3(ii) will not be applicable in this case. It is the submission that the appellant company being recipient of service, they could not have passed on incidence of service tax to its clients.

4. The learned JDR reiterates the findings of the Commissioner (Appeals).

5. On a careful consideration of the submission made by the learned JDR and perusal of the case records, I find that the issue involved is regarding refund of service tax as recipient of services. The findings of the Commissioner (Appeals) while dismissing the appeal filed by the assessee are as under :

"I have carefully gone through the records of the case and the oral submissions made by the learned advocates during personal hearing. I have also gone through the invoices submitted by the appellants. It is observed that the appellants have paid service tax of Rs. 2,06,367/- on the grounds stated above, I find that the argument of the appellants are not correct and within the ambit of law inasmuch as the appellants have registered themselves under service tax and appeared to have collected the service tax from a service provider abroad and paid the same to the department, hence the doctrine of

unjust enrichment is applicable. There is no proof on records that the service tax element is not passed on to the other end party abroad. And further the claim for the period prior to Feb 2007 cannot stand since it is time barred under the provisions section 11B of Central Excise Act, 1944 read with section 83 of Finance Act, 1994 which the lower authority has correctly held. The argument of the appellants that the payment of service tax is erroneous under mistake of law is not acceptable as ignorance of law is not an excuse. Moreover the appellants themselves agree to, that the service tax paid by the appellant may not exactly tally with the amount of service tax paid. On thorough study of the case law quoted by them shows that there is no relevance to that of this instant issue, in as much as the refund does not related to service tax collected on the service which is not leviable and did not relate to service tax at all only. The instant issue involved service tax and which is included in the gross amount charged. I find no infirmity in the original order."

It can be seen from the above reproduced findings that despite given a chance, the appellants have not produced any record or evidence to indicate that they have not passed on the element of service tax. Hence the claim on unsubstantiated grounds will not carry the case of the assessee any further. They should have produced the evidence to indicate that the service tax element is not passed on to their customers. In the absence of any such evidence, I find that the order of the Commissioner (Appeals) is correct and legal and does not suffer from any infirmity. The appeal is rejected.

(Pronounced and dictated in the court)
