Manpower Supply: Sharing the employees with sister concern is not Services

Case Background

The facts of the case are the appellant, M/s. Paramount Communications Wire and Cable Ltd., another sister concern company M/s. Paramount Wire and Cable Ltd. were utilising the services of certain common staff located in their common head office at Delhi. Such staff was on the pay roll of Paramount Communication Ltd. They were doing the work relating to both the companies and Paramount Cables Ltd. was paying their share of the cost of these employees to the appellant. There are entries in the books of accounts of the appellant showing receipt of payments from Paramount Wires and Cables. Revenue want to tax this receipt as consideration for supply of manpower

The definition of man-power supply services as Section 65(68) is as under:-

> "'Manpower recruitment or supply agency' means any commercial concern engaged in providing any service, directly or indirectly, in any manner for recruitment or supply of man power, temporarily or otherwise, to a client."

The present appellant is a manufacturer of excisable goods and is not engaged in the business of supply of manpower, though they were sharing the services of some of the office personnel with their sister concern. Here there is no case of supply of manpower by the appellant to the sister company because the employees concerned continued to work for the appellant also and arrangement in which certain employees work for two of sister concerns and the expenses of employees are shared, the manpower is not supplied by one company to other. The situation is that the personnel do the work of both the companies. The service is by the personnel to the two companies in question and not one company providing service to the other company. So there is no taxable activity on the part of the appellant to the other to be taxed under manpower supply service taxable as 65(105)(k) and therefore, the stay petition as well as appeals are allowed. The fact the payment to employee is made by one company and there is inter-company payment of the share of the cost of the employees utilized by the other company cannot be interpreted to mean one company was providing service to the other. We accordingly set aside the impugned order and allow the appeal. Stay petition also gets disposed of.

Case Law

CUSTOMS EXCISE & SERVICE TAX APPLELLATE TRIBUNAL PRINCIPAL BENCH, NEW DELHI

ST/ROM/2764/2012 in Appeal No.ST/1459/2011

M/s. Paramount Communication Ltd.

Applicant

Vs.

C.C.E., Jaipur

Respondent

Appearance:

Ms. Sukriti Das, Advocate for the Appellants

Shri Govind Dixit, DR for the Respondent

Coram:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)

Hon'ble Mr. Mathew John, Member (Technical)

Date of Hearing/Decision: 19.10.2012

Misc. Order No.ST/M/409/12-Cus.

[Per: Mathew John (for the Bench)] - In this proceeding, the ROM application filed by revenue for rectifying the Final Order passed by the Tribunal vide combined Stay Order/ST/S/670/12-Cus and Final order No.ST/A/463/2012-Cus(Br) dated 5.6.2012 is being considered. The grounds for filing the application and prayer made by the Commissioner are reproduced as under:

'GROUNDS FOR FILING ROM:-

(i) In the para 2,3 and 4 of the Final Order No.ST/A/463/2012-Cu(DB) & Stay order No.SO/ST/670/2012 dated 5.6.12, the Hon'ble CESTAT has held that:-

"2. The benefit of Cenvat credit paid on outdoor catering services received by the appellants for providing food to their employees as also Service Tax paid on running a cab service for transportation of employees from home to factory and back to home stands denied on the ground that the said services cannot be held to be eligible cenvatable input services.

3. We find that the issue is no more res-integra and stand decided by the following decisions:-

CCE, Bangalore Vs. Bell Ceramics Ltd. [2012 (25) S.T.R. 428 (Kar.)] = CEO 2011 Kar

553

CCE, Bangalore III Vs. Stanzen Toyotetsu India (P) Ltd. [2011 (23) S.T.R. 444] = STO 2011 Kar 817

4. In as much as both the issues are covered by the decisions of the Hon'ble Court, respectfully following the same, we set aside the impugned order and allowed the appeal with consequential relief to the appellants. Stay petition as also appeal gets disposed of in the above manner."

(ii) The above facts do not pertain to issue involved in the appeal No. ST/1459/2011-Cu(DB) filed against the Order in Appeal No.287 (DKV) ST/JPR-I/2011 dated 30.6.2011 (correctly mentioned in the impugned order).

(iii) The facts appears to be of any other appeal. As the issue involved in this appeal is **non-payment of Service Tax amounting to Rs.167394/- on the amount received by M/s. Paramount Communication Ltd. Khushkhera (Alwar) from M/s. Paramount Wires and Cables Ltd., Bhiwadi on account of sharing of office staff which fall under the category of "Manpower Recruitment or Supply, Agency Service".**

(iv) In view of above the Final Order No. ST/A/463/2012-Cus(DB) & Stay Order No. SO/ST/S/670/2012 dated 5.6.12 passed by the Hon'ble CESTAT appears to carry mistake as pointed out above and requires correction.

PRAYER

It is therefore, prayed that the mistake apparent may kindly be rectified and the Final order No.ST/A/463/2012-CU(DB) and Stay order No. SO/ST/S/670/2012 dated 5.6.12 may be modified accordingly.'

2. Learned AR appearing for the revenue submits that this is not a mistake apparent on record and the facts as carried out in the order and the decisions relied upon do not relate to appeal in question and therefore, now if the ROM application has to be considered, the entire matter has to be reconsidered and such reconsideration of matter cannot be allowed in a ROM application and therefore, the Revenue's prayer should be rejected.

3. He relies on the following decisions of the Apex Court in the matter:

1. Deva Metal Powders Pvt. Ltd. Vs. Commissioner Trade Tax, UP [2008 (221) E.L.T. 16 (SC)] = STO 2007 SC 1076;

2. Asstt. Commr. Income Tax, Rajkot Vs. Saurashtra Kutch Stock Exchange Ltd. [2008 (230) E.L.T. 385 (SC)] = CEO 2008 SC 204;

3. Sunitadevi Singhania Hospital Trust Vs. Union of India [2009 (233) E.L.T. 295 (SC)] = CIO 2008 SC 66;

4. Commissioner of Sales Tax, UP Vs. Bharat Bone Mill [2007 (6) S.T.R. 167 (SC)] = STO 2007 SC 71;

5. Mustan Taherbhai Vs. Commissioner of Central Excise & Customs [2011 (265) E.L.T. 161 (SC)] = CIO 2011 SC 229;

6. Commissioner of Central Excise, Mumbai Vs. Oswal Petrochemicals Ltd. [2010 (256) E.L.T. 190 (SC)] = CEO 2010 SC 1146;

7. Commissioner of Central Excise Vadodara Vs. Steelco Gujarat Ltd. [2004 (163) E.L.T. 403 (SC)] = CEO 2003 SC 56

4. We are really surprised by the prayer of AR for rejecting the application filed by the Revenue. So we have considered the matter on our own and we find that there is a mistake is apparent on record inasmuch as it would appear that dictation which was given in another case has got copied as order in this particular appeal, which got signed by both the Members and was issued. We also note that as per the notesheet in file the dictation was given in the open court allowing the stay petition as also appeal on 5.6.2012.

5. Learned AR insists that in terms of various decisions of Hon'ble Supreme Court, the rectification can be done only where error is apparent and the entire order cannot be replaced with a new order.

6. We are aware of all the judgements cited by the learned AR and the ratio laid down is that no review can be sought for, in the garb of application for rectification of mistake. The question required to be decided in the present application is as to whether the entire order which got mistakenly issued can be held to be an error or the same can be considered to be a review.

7. In the entire scenario, we note that admittedly, a wrong order got issued (as the mistake happened in the hands of Steno) without noticing the facts of the present case, the replacement of said order can not be considered to be a review of the same. The entire order, which got issued was a mistake inasmuch as the same does not relate to the facts of the present case except that the reference of Appeal No. and impugned order in appeal match in the preamble to those in case under consideration making it look as if the present order relates to the appeal of M/s. Paramount Communication. As such, it has to be concluded that the entire order is a mistake, requiring rectification of same. The point made out by learned AR that such rectification can be done only to small clerical mistake in the order, cannot be appreciated inasmuch as in the present case the entire order is a clerical mistake. The mistakes required to be rectified does not depend upon the length of said mistake or does not relate to one or two words in the order. When the entire order which got issued was not relatable to the matter under dispute, not withstanding the reference numbers in the preamble of the same, it has to be held as if the entire order was a mistake. In fact such provisions for correction of such mistakes in the Act is for rectifying mistakes on pointing out by either side or by the Tribunal itself. If the same comes to the notice of the Tribunal as such even if the present ROM application was not filed by the Revenue, the Tribunal was empowered to rectify the mistake on its own, coming to know of the same. Similarly, such rectification application can be filed by the assessee also inasmuch as the Final Order does not relate to facts of their case. So, the insistence of the learned AR that such ROM application filled by the Revenue should be rejected at the threshold cannot be appreciated and prayer to that effect cannot be accepted.

8. At the stage of dictating order on 5.6.2012, no objection regarding the facts or the arguments dictated was raised by either side. Therefore, our inference is that order was dictated correctly. Though the transcription which got signed relate to a different matter. Therefore, it is very obviously a mistake apparent on record and needs correction at any rate and therefore, we decided to dictate the appropriate order afresh.

9. We had asked the learned AR whether he has got any submissions on merits to make. He has submitted that he does not want to make any submissions in the matter regarding merits because it will contradict his stand that re-appreciation of the merits of the case cannot be done while dealing with an application for Rectification of Mistake. We accordingly hold that the order dictated separately would be held as the correct order passed in the appeal of M/s. Paramount Communication Wire and Cables Ltd. being Appeal No. Service Tax/1459/2011. Earlier order dt.

5.6.12 is withdrawn to ROM is allowed.

(Pronounced in the open Court)

CASE CITED :

(1) CCE, Bangalore III Vs. Stanzen Toyotetsu India (P) Ltd. : STO 2011 Kar 817

(2) Commissioner of Sales Tax, UP Vs. Bharat Bone Mill : STO 2007 SC 71

(3) Deva Metal Powders Pvt. Ltd. Vs. Commissioner Trade Tax, UP : STO 2007 SC 1076

(4) Asstt. Commr. Income Tax, Rajkot Vs. Saurashtra Kutch Stock Exchange Ltd. : CEO 2008 SC 204

(5) Sunitadevi Singhania Hospital Trust Vs. Union of India : CIO 2008 SC 66

(6) Mustan Taherbhai Vs. Commissioner of Central Excise & Customs : CIO 2011 SC 229

(7) Commissioner of Central Excise, Mumbai Vs. Oswal Petrochemicals Ltd. : CEO 2010 SC 1146

(8) Commissioner of Central Excise Vadodara Vs. Steelco Gujarat Ltd. : CEO 2003 SC 56

(9) CCE, Bangalore Vs. Bell Ceramics Ltd. : CEO 2011 Kar 553

Cases, Notifications, Circulars Reffered / Cited :

(1) CCE, Bangalore III Vs. Stanzen Toyotetsu India (P) Ltd.STO 2011 Kar 817

(2) Commissioner of Sales Tax, UP Vs. Bharat Bone MillSTO 2007 SC 71

(3) Deva Metal Powders Pvt. Ltd. Vs. Commissioner Trade Tax, UPSTO 2007 SC 1076

(4) Asstt. Commr. Income Tax, Rajkot Vs. Saurashtra Kutch Stock Exchange Ltd.CEO 2008 SC 204

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(8) Commissioner of Central Excise Vadodara Vs. Steelco Gujarat Ltd.CEO 2003 SC 56

(9) CCE, Bangalore Vs. Bell Ceramics Ltd.CEO 2011 Kar 553