M/s. Sahara Ex-Servicemen Welfare Co-operative Society Ltd. Vs Commissioner of CGST, Customs and Central Excise ï¿½ Alwar

Court: Customs, Excise And Service Tax Appellate, New Delhi

Date of Decision: Jan. 23, 2025

Acts Referred: Finance Act, 1994 â€" Section 65B(37), 78

Hon'ble Judges: Dr. Rachna Gupta, Member (J); Hemambika R. Priya, Member (T)

Bench: Division Bench

Advocate: Keshav Gupta, Jayakumari

Final Decision: Allowed

Judgement

Dr. Rachna Gupta, J

1. Present appeal has been filed to assail the Order-in-Original No.68 & 69/16-17 dated 06.01.2017. The facts relevant for the present adjudication

are as follows:

1.1 M/s. Sahara Ex-Servicemen Welfare Co-operative Society Ltd., the appellant, is engaged in providing the taxable services under the category of

Ã¢â‚¬Ëœ Security Agency & Manpower Recruitment/Supply AgencyÃ¢â‚¬â„¢. During the course of audit of the appellantÃ¢â‚¬â„¢s record, the officers of Central

Excise Commissionerate, Jaipur-I, observed the difference between the value shown in the Balance Sheets and the value shown in the ST-3 returns

for the period from 2010-11 to 2013-14. On being enquired, the appellant informed that they had paid service tax only in those cases where they

received amount in the name service tax from their clients. The department formed an opinion that the appellant were required to pay service tax on

the entire taxable value of services provided or to be provided by them for the disputed period. While admitting their liability, the appellant though paid

the service tax but only on 25% of the gross amount of consideration received by them availing the benefit of Notification No.30/2012-ST dated

20.03.2012. The department alleged that the benefit of said notification is available only to an individual or Hindu Undivided Family or partnership firm,

including the association of persons but the appellant does not fall under any of those categories, hence, was required to pay tax on the entire (100%)

amount of the consideration received by them. With these observations, the show cause notice bearing No. 30/2015 dated 26.10.2015 was served

upon the appellants proposing the recovery of short paid amount of service tax amounting to Rs.2,31,88,212/- along with the proportionate interest and

the appropriate penalties in terms of Section 78 of the Finance Act, 1994. The another Show Cause Notice No. 01/2016 dated 18.04.2016 for the

subsequent period was also served upon the appellants proposing the recovery of service tax amounting to Rs.68,45,766/- that to along with the

proportionate interest and the appropriate penalties. The proposal of both the show cause notices have been confirmed vide Order-in-Original as has

been challenged before this Tribunal. Being aggrieved, the appellant is before this Tribunal.

2. We have heard Shri Keshav Gupta, learned Chartered Accountant for the appellant and Ms. Jayakumari, learned Authorized Representative for the

department.

3. Learned Chartered Accountant for the appellant has mentioned that the appellant is registered with Rajasthan Co-operative Society w.e.f.

02.12.2004 under Rajasthan Co-operative Society Act, 2001. It is not registered under Society Registration Act, 1860 and as such is different from

being called as society. The appellant is rather as good as Ã¢â‚¬Ëœ Association of PersonsÃ¢â‚¬â„¢ as it is a Ã¢â‚¬Ëœ PersonÃ¢â‚¬â„¢ as defined under the definition of

person given in sub-clause (vii) of Section 65B(37) of the Finance Act, 1994 and hence it is covered under the list of eligible service providers

mentioned in clause 1(A)(v) of Notification No. 30/2012-ST. It is submitted that Ã¢â‚¬Ëœ Association of PersonsÃ¢â‚¬â„¢ is formed for a common purpose of

earning profits jointly. The appellant is also formed to promote the economic-independence of ex-servicemen who willingly have associated

themselves for the purpose of earning profits. Learned Chartered Accountant has relied upon the decision of HonÃ¢â‚¬â„¢ble Bombay High Court in the

case of CIT Vs. Lakshmidas Devidas reported as (1937) 5 ITR 584 and also in Dwarakanath Harischandra Pitale reported as (1937) 5 ITR 716

(Bom). Learned Chartered Accountant also impressed upon the decision of HonÃ¢â‚¬â„¢ble Supreme Court in the case of CIT Vs. Indira Balkrishna

reported as (1960) 39 ITR 546 (SC) also in N V Shanmugham & Co. Vs. CIT reported as (1971) 81 ITR 310 (SC 3 members bench) to impress upon

that a combination of persons formed for promotion of a joint enterprise constitutes an association to be called as an Ã¢â‚¬Ëœ Association of PersonsÃ¢â‚¬â„¢. It

is submitted that the benefit of the Notification No. 30/2012 as available to the Ã¢â‚¬Ëœ Association of PersonsÃ¢â‚¬â„¢ is therefore wrongly denied to the

appellant. The service recipient of the appellant all are body corporates. The PAN No. issued to the appellant is sufficient to prove that it is registered

as Ã¢â‚¬Ëœ Association of PersonsÃ¢â‚¬â„¢. With respect to the tax liability created by including the amount received as pure agents or reimbursement as that

of salary to guards, PF, ESI paid to the securirty guards, learned Chartered Accountant for appellant has relied upon the decision of HonÃ¢â‚¬â„¢ble

Supreme Court in the case of Union of India Vs. Intercontinental Consultants and Technocrats Pvt. Ltd. (Civil Appeal No. 2013 & 2014 & Others).

With these submissions, the order under challenge is prayed to be set aside and appeal is prayed to be allowed.

4. While rebutting submissions made on behalf of appellant, learned Departmental Representative appearing for the department has reiterated the

findings arrived at by the adjudicating authority. it is submitted that the information was sought from the concerned commissionerate also about claim

of the appellant of being Ã¢â‚¬Ëœ Association of PersonsÃ¢â‚¬â„¢. It has been informed that the only document submitted is the PAN card. The forth letter

thereof represents the constitution of a taxable person. As per the PAN of the appellant the forth letter is Ã¢â‚¬ËœBÃ¢â‚¬â„¢ Ã¢â‚¬Ëœwhich stands for Ã¢â‚¬ËœBody of

IndividualsÃ¢â‚¬â„¢ and not for Ã¢â‚¬Ëœ Association of PersonsÃ¢â‚¬â„¢. Therefore the claim of appellant of being an Ã¢â‚¬Ëœ Association of PersonÃ¢â‚¬â„¢ is not correct.

Benefit of Notification No. 30/2012 dated 20.03.2012 is therefore not available to the appellant. The same has rightly been denied. Impressing upon no

infirmity in the order under challenge, the appeal is prayed to be dismissed.

5. Having heard the rival contentions, we observe that two issues have to be decided:

(i) The demand of service tax denying appellant the benefit of Notification No. 30/2012 date 20.03.2012.

(ii) The demand of service tax on the amount claimed to have been received as pure agent and reimbursable.

6. The issue wise findings are as follows:

6.1 Issue No. 1

To adjudicate this issue foremost the notification is perused which exempts certain taxable services as mentioned therein including the Manpower

Recruitment service when provided by the persons as mentioned in Para A (ii) (c) of the said notification includes a co-operative society established

by or under any law. The table given in the notification, Para B thereof, the Entry No. 8 exempts the services provided by way of supply of manpower

for any person to the extent of 75% which has to be paid by the service recipient. The appellant admittedly is a co-operative society registered under

Rajasthan Co-operative Society Act, 2001. The copy of certificate of registration is also produced by the appellant. There is no evidence to the

contrary by the department. In the light of above observations with respect to Notification No.30/2012, we hold that the appellant being a co-operative

society was very much eligible for the abatement/exemption of 75% of the tax liability. The Order-in-Original has denied the said exemption holding

the appellant is not the Ã¢â‚¬Ëœ Association of PersonÃ¢â‚¬â„¢. To our understanding the said comparison is not required for the purpose of the impugned

notification. It is an admitted fact that 25% of tax liability has been discharged by the appellant. In light of this discussion the confirmation of remaining

75% of the gross value as service tax from appellant is not sustainable.

6.2 Issue No. 2

The demand has been confirmed including the amount of reimbursement namely salary to cards, PF, ESI paid to security guardsÃ¢â‚¬â„¢ in the gross

value for the impugned period, however, that issue stands already decided by HonÃ¢â‚¬â„¢ble Supreme Court in the case of Intercontinental Consultants

and Technocrats Pvt. Ltd. (supra). In light of the said decision the demand on the amount received as pure agents or on the amount of reimbursement

is also not sustainable. Order to that extent is also liable to be set aside.

7. Finally coming to the plea of invocation of extended period of limitation, from the above discussion, it has been already held that appellant was not

liable to the tax as has been proposed by the impugned show cause notice and has been confirmed by the impugned order. Hence, the question of

evasion of tax becomes redundant. Also no question arises with the appellant to have an intent to evade the same. Accordingly, we hold that the

extended period has wrongly been invoked. In light of the entire above discussion, the order under challenge is not sustainable, neither on merits nor on

the technical issue of limitation. Therefore, same is hereby set aside. Consequent thereto, the appeal is allowed.

[Order pronounced in the open court on 23.01.2025]