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The applicant is a resident of the State of New York and is a citizen of the United States of America. He is a resident of the State of New York and is a citizen of the United States of America. He is a resident of the State of New York and is a citizen of the United States of America.

and under the provisions of the laws of the State of New York and the laws of the United States of America. He is a resident of the State of New York and is a citizen of the United States of America.

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ORDER IN APPEAL

1. Welapun Steel Ltd., Survey No. 650682 Welapun City, Weliswadi Tal. Anjar (Andhra Pradesh) referred to as 'appellant' filed present appeal against Order-in-Original No. 8 & 10DC/Anjar-Rhachau/2017-18 dated 29.11.2017 (hereinafter referred to as 'impugned order') passed by the Deputy Commissioner, CGST Division, Anjar-Rhachau (hereinafter referred to as 'the adjudicating authority').

2. The brief facts of this appeal are that the appellant was issued SOA No. 200/DC/Anjar/18 demanding service tax of Rs. 1,57,82,120/- for the period from May 2008 to March 2013 alleging that they have provided service or supply of tangible goods but not paid service tax on the said service. The order was confirmed vide Order-in-Original No. RAJ-EXCUS 001-0054-13-14-15 dated 27.8.2014. Subsequent to this the appellant was issued two periodical demand notices on 16.7.2015 and dated 19.10.2017 demanding service tax of Rs. 15,32,205/- and Rs. 15,77,700/- respectively under Section 72(i) of the Finance Act 1994 (hereinafter referred to as 'the Act'), along with interest under Section 75 of the Act and for imposition of penalty under Section 78 of the Act for the period April, 2014 to March 2014 and April 2015 to June, 2017 respectively. The impugned order estimated demand of service tax aggregating to Rs. 35,00,940/- along with interest and imposed penalty of Rs. 3,50,954/- under Section 76 of the Act.

3. Being aggrieved by the impugned order the appellant preferred the present appeal. It relied on the grounds that Section 65(105)(zzzz) of the Act and the Circular L11, New Delhi's D.O. F.No. 334/12985-TR/1 dated 28.2.2008, state that any service in relation to supply of tangible goods without transferring right of possession and effective control is liable to service tax that supply of tangible goods for use which is liable to VAT/Sales tax is deemed sale of goods is not covered under the scope of the service that whether a transaction involves transfer of possession and control is to be decided based on the terms & conditions of the contract between parties and other material facts; that under lease agreement, the appellant transferred the right of possession and effective control of the Diesel Generating Sets to the Lessees as is evident from Clause VI of the agreement, which was specifically provided that the Lessees were required to bear all the maintenance and operating costs of the said equipment during the term of the lease that all the expenses incurred in order to maintain the equipment in an operating and functional state are borne by the Lessees and as soon as the Lease Agreement comes into effect, the appellant is not responsible for the working and maintenance of the DG sets and therefore the transactions in question do not satisfy the definition of taxable

service under Section 66(1)(b)(ii) of the Act that the UK sets were supplied to the lessors for a longer period of time than indicated and number of parties with respect to succession and control. The lessors were responsible for obtaining approvals, financial guarantees if any required for generating normally and the lessors were to be paid after transferring the UK sets to the lessors that the appellant relied on conditions in the case of Blue Bird Aviation Limited reported as 2012 (18) S.T.R. 598 and 2013 (20) S.T.R. 323 and conditions in the case of Aggarwal Brothers reported as A.T. 1999 30 280 for more information. He has not suppressed any fact from the department and has furnished all documents in their names. That succession is final can have only one meaning that correct information was not disclosed. Hence, the appellant's contention that there is a failure to disclose does not amount to a failure to disclose. There must be some positive act from the side of the appellant to the effect of suppression that no penalty can be imposed on the appellant as they have acted bona fide at all times and there was no mala fide intention for not disclosing the facts in the above case and therefore provisions of Section 73 of the Act cannot be invoked, but whenever demand is not sustainable, the imposition of penalty cannot be sustained and has to be set aside as per the principle laid in decisions in the case of Police Chemicals Private Limited reported as 2005 (18) E.L.T. 267 (SC), Anand Nath Kanya Co. Ltd. reported as 2006 (28) E.L.T. 449 (SC), P.M.M. Co. reported as 1998 (16) E.L.T. 407 (SC), Coraco Roversham Ltd. reported as 2004 (72) E.L.T. 101 (All.) and H. G. Co. Investment reported as 1998 (24) E.L.T. 2 (All.) that penalty is not imposable in a situation where the Show Cause Notice process is not by violation as held in the cases of Tarnwark Industries Ltd. reported as 1998 (100) E.L.T. 992 Patanjali Gandhi Dugg. Reported as 1993 (91) RIT 395. Avon Service Co. reported as 1998 (21) E.L.T. 375 and Marwalco Enterprises reported as 1998 (26) E.L.T. 388.

4. Persons bearing Nos. Dns. Dt. 26.12.2008, 2.1.2009, 3.1.2010 and 29.1.2010, however, neither appeared nor any authorized representative of the appellant appeared for personal hearing on any of the dates. Therefore, it cannot be held that the appeal on merits on the basis of averments made in view of Section 20(1) of the Finance Act, 1994 read with clause in Section 32(1A) of the Central Excise Act, 1944.

FINDINGS:-

5. I have carefully gone through the facts of the case. The appellant (2009) Appeal No. 109400 and submissions made by the appellant. The case to be decided is whether in the facts and circumstances of the present case, Diesel Generating Sets given or lessor's consumption to be providing taxable services

ORDER IN APPEAL:

1. Welaupā Sāwā Jū. Survey No. 650062 Welaupā City, Welaupā, Tal. Anjar (Kutch) (hereinafter referred to as 'appellant') files present appeal against Order-in-Original No. 8 & 1070/Anjar-Rachau/2017-18 dated 28/11/2017 (hereinafter referred to as 'impugned order') issued by the Deputy Commissioner, GST Division, Anjar-Rachau (hereinafter referred to as 'the adjudicating authority').

2. The brief facts of this appeal are that the appellant was issued SOA No. 206/GST/2017 concerning service tax of Rs. 1,67,62,120/- for the period from May, 2006 to March, 2013 alleging that they have provided service of supply of tangible goods but not paid service tax on the said service, which was confirmed vide Order-in-Original No. RAJ EXCLLS-200-COM-15-14-15 dated 27/8/2014. Subsequently vide the appellant was issued two periodical returns of returns dated 10/4/2016 and dated 15/10/2017 demanding service tax of Rs. 18,31,205/- and Rs. 18,77,310/- respectively under Section 73(1) of the Finance Act, 1994 (hereinafter referred to as 'the Act') along with interest under Section 75 of the Act and for imposition of penalty under Section 76 of the Act, for the period April, 2013 to March, 2014 and April, 2013 to March, 2017 respectively. The impugned order confirmed demand of service tax aggregating to Rs. 35,09,545/- along with interest and imposed penalty of Rs. 3,50,227/- under Section 76 of the Act.

3. Being aggrieved by the impugned order, the appellant preferred the present appeal. Sections 85(105)(a)-(c) of the Act and ex Research Unit, New Delhi's D.O. F.No. 034/15008-TR., dated 28.2.2013, state that any service in relation to supply of tangible goods without transferring right of possession and effective control is liable to service tax; that supply of tangible goods for use which is liable to VAT/Sales tax is deemed sale of goods & not covered under the scope of the service; that whether a transaction involves transfer of possession and control is to be decided based on the terms & conditions of the contract between parties and other material facts. In the case at hand, agreement, the appellant transferred the right of possession and effective control of the Diesel Generating Sets to the Lessees as is evident from Clause VI of the agreement where it was specifically provided that the Lessees were required to bear all the maintenance and operating costs of the said equipment during the term of the lease; that all the expenses incurred in order to maintain the equipment in an operating and functional state are incurred by the Lessees and as soon as the Lease Agreement comes into effect, the appellant is not responsible for the working and maintenance of the DG sets and therefore the transactions in question do not satisfy the definition of taxable

19) Upon WDFGL paying the lease rentals hereby reserved and observing and performing the conditions and covenants herein contained WDFGL shall quietly and peacefully possess and enjoy the use of the said equipment hereby leased during the period of lease without any disturbance or any interruption by WSL or any person claiming under or in trust for WSL, provided that in case of any breach of any of the conditions and covenants to be observed and performed by WDFGL, WSL and ~~successors~~ the said equipment, without prejudice to their right to recover all amount of rent and damages for breach of such conditions or covenants.

20) Lease Agreement dated 17.02.15 with M/s. WSL

21) WSL shall pay without deduct, Lease rent of Rs. 5.00 lakhs per mth applicable from for use of the DG set on a monthly basis at the end of every month.

22) WSL shall not be entitled to assign, transfer, sublease, sublease or part with the possession of the said equipment or any part thereof to favor of any person without obtaining the prior permission of WSL (agent) in writing.

23) WSL hereby agrees to transfer in whole, its right to use said equipment for the lease period.

24) _____

25) _____

26) WSL shall not claim any right, title or interest in the said equipment and shall have only right in use the said equipment under these covenants and conditions unless otherwise stipulated.

27) WSL shall not execute or perform any act or thing to the contrary whereby or by reason or means thereof, the lease may be forfeited.

28) Upon WSL paying the lease rentals hereby reserved and observing and performing the conditions and covenants herein contained WDFGL shall quietly and peacefully

7. The appellant has contended that extended period under provision in Section 73(1) of the Act is not in violation of that penalty under Section 78 of the Act & also not imposed as a deterrent & no suppression of facts with intent to evade payment of service tax. However, I find that arguments of the appellant are not relevant in the present case, since demands were raised within normal period of time limit specified under Section 73(1) of the Act and SOA has proposed to impose penalty under Section 78 of the Act and the appellant itself has admitted penalty under Section 78 of the Act and not under Section 73 of the Act. Since the appellant failed to pay service tax, debar position of law is very clear and dispute regarding the order by authority was confirmed.

8. In view of above, I uphold the impugned order and reject appeal filed by the appellant.

9. अतीवदुःखी हूँ कि इसी से नई अपील का विषयश उपरोक्त तरीके से निपटा जा रहा है।

10. In view of above, I dispose of the appeal as above stated.

अधीक्षक (कन्सल्टेन्स)

(मुद्रांक संतीष)

प्रधान अधिकारी (अपील)

By Email only

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M/s. Vetsup, Road No. 10,
Bansari, Co. 65/352,
Vesant City,
Vesant, edhi,
Tal. Anjar (Kutch)

से वेल्सपुन स्ट्रीट लिमिटेड,
रॉड नं. 10, बंसारी,
वेल्सपुन सिटी,
अंजार (कच्छ),
ता. अंजार (कच्छ).

Copy to:

- 1) The Financial Chief Commissioner, GST & Central Excise, Amreli District, Amreli for kind information please.
- 2) The Commissioner, GST & Central Excise, Gandhinagar, Gandhinagar for necessary action.
- 3) The Deputy Commissioner, Central GST Division, Anjar-Bhelsar for necessary action.

Quantity - 6.

