

ORDERS IN APPEAL

1. Sri. Krishna Prasad, Advocate, Flat No. 20, Shivam Nagar Society, 570 Road, Lower Circle, Phase - 2 (hereinafter referred to as 'the appellant') has filed this appeal against O.D No. 2296(STAT)/2011-12 dated 08.02.2012 (hereinafter referred to as 'the impugned order') passed by the Assistant Commissioner (O.D.) Chennai-2, 10, Chinnappa Street in relation to 2871 the affidavit 'log an liability'.

2. In the facts and circumstances of the case it was observed that the appellant had been providing water power and maintenance and repairs of the water supply tanks since 2001 and also were providing construction services to the Eastern Salt and Marine Chemicals Research Institute for construction of small boundary wall and the proposed water supply tanks to its premises. The appellant had made some payment of service tax as per the single certificate issued on the basis of a bill produced by the appellant in favour of the authority as provided by the issuing authority. The assessing authority took the higher rate of service tax as applicable for purpose of calculation of service tax accordingly for the period 2006-07 (Rs. 68,16,600/-) and 2012-13. The appellant has since paid the service tax amounting to Rs. 3,34,29,977/-. Therefore, there would not be any demand of service tax, which was only Rs. 406,61,111/- subject to 10% ad valorem on the demand of interest and penalties were nil and nil.

3. Feeling aggrieved, the appellant had filed the appeal on the following grounds:

- a. That the services provided were related to the Western Railway. These services were required on the basis of the Central Agreement dated 20.10.07. These services were in relation to the maintenance of the passenger coaches supplied to the passenger traveling in first class AC coaches, second AC coaches and third class AC coaches. The appellant had duly managed the said affairs in the manner that the said coaches had been distributed to each and every passenger traveling in the above mentioned coaches. Thus, it is clearly established that the collected revenue had ultimately been provided by the railways to the passengers;
- b. That the appellant has just managed the said affairs and therefore, the work carried out by the appellant is not liable for the purpose of 'Manufacture or construction of goods'.
- c. That, whatever the work is provided by the Government through the contract is not taxable service as per the provisions. The Western Railway is working under the control of the Government.
- d. That the service has been provided while discharging the statutory duties of the so called confirmed service as at Rs. 3,34,29,977/- was only pertaining to the 'Western Railway' and not in respect of the so called construction work and therefore the impugned order is not proper and legal.
- e. That they relied on the judgement of the case law viz. Brijesh Enterprises v/s. CIT, reported in 2012 (377) 282 (GSIAT).

4. General Hearing was held on 10.05.2013. Sri. Lushar Sekharan Reddy, Proprietor appeared on behalf of the appellant and reiterated the grounds made in the appeal memorandum.


22/05/2013




17. Also upheld the order of imposition of penalty of Rs. 10,000/- under Section 73(1) of the Finance Act, 1994 for failure on the part of the appellant in non filing of S-3 returns as provided under Section 201A of the Finance Act, 1994. Further upheld imposition of penalty of Rs. 5,000/- under Section 201A of the Finance Act, 1994.

18. In view of above, the impugned order dated 08.02.2017 is upheld and copied as enclosed.

19. The copies filed by the appellant to be disposed of in accordance with

સાચીપત્ર,

 જે. વી. કે. કુલકર્ણી
 અધીક્ષક (અમીન)


 ADDITIONAL COMMISSIONER
 TAXATION
 AHMEDABAD

Date: 05.06.18

File No. 52/987/2017

BY M/D:

To,
 M/s. K. K. & Family Enterprises,
 Prop. Shri. Datta Sakharam Bodeke,
 Flat No. 20, 2nd Floor, Sagar Society,
 B. D Road, Sewal Cross, Bhavnagar.

2343, Mahatma Power Enterprises,
 Prop. Shri. Datta Sakharam Bodeke,
 Flat No. 20, 2nd Floor, Sagar Society,
 Sewal Cross Road,
 Sewal, Bhavnagar.

Copies to:

- 1. The Chief Commissioner, GST & Central Excise, Ahmedabad Zone.
- 2. The Commissioner, GST & Central Excise, Bhavnagar.
- 3. The Assistant Commissioner (AT), GST & Central Excise (IC), Bhavnagar.
- 4. The ITSD/JT Commissioner, Systems, GST, Bhavnagar.
- 5. Misc. File.
- 6. Retd.

