IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA

REGIONAL BENCH - COURT NO.2

Service Tax Appeal No.117 of 2009

(Arising out of Order-in-Original No.03/COMMR/ST/ADJ/DIB/09 dated 25.03.2009 passed by Commissioner of Central Excise, Dibrugarh.)

M/s. Dewanchand Ramsaran Industries Private Limited
(Phukan Nagar, PO Shivsagar, District Shivsagar, Assam.)

...Appellant

VERSUS

Commissioner of Central Excise & Service Tax, Dibrugarh

.....Respondent
(Milan Nagar, Lane-F, PO, CR Building, Dibrugarh-786003.)

WITH

Service Tax Appeal No.175 of 2009

(Arising out of Order-in-Original No.03/COMMR/ST/ADJ/DIB/09 dated 25.03.2009 passed by Commissioner of Central Excise, Dibrugarh.)

Commissioner of Central Excise & Service Tax, Dibrugarh
(Milan Nagar, Lane-F, PO, CR Building, Dibrugarh-786003.)

...Appellant

VERSUS

M/s. Dewanchand Ramsaran Industries Private Limited
(Phukan Nagar, PO Shivsagar, District Shivsagar, Assam.)

.....Respondent

APPEARANCE

Shri R.G.Seth, Advocate for the Appellant (s)
Shri S.S.Chattopadhyay, Authorized Representative for the Respondent (s)

CORAM: HON'BLE SHRI P. K.CHOUDHARY, MEMBER(JUDICIAL)
HON'BLE SHRI C.J.MATHEW, MEMBER(TECHNICAL)

FINAL ORDER NO. 75564-75565/2020

DATE OF HEARING : 25 September 2019
DATE OF DECISION : 09 November 2020

P.K.CHOUDHARY :

Both the assessee and the Department are in appeal against the impugned *de novo* Order dated 25.03.2009 passed by the learned Commissioner, Central Excise, Dibrugarh, whereby the demand of Service Tax of Rs.2,63,36,665/- has been confirmed under the category of 'Maintenance and Repair service' for the period July 2003 to March 2006 alongwith applicable interest. The learned Commissioner has refrained from passing any order with regard to the proposal made in the Show Cause Notice dated 29.10.2007 for imposition of penalty on the ground that appeal filed by the Department before the Hon'ble Gauhati High Court was pending to the extent of the order whereby penalty was dropped in the previous adjudication Order dated 22.02.2008 passed by the then learned Commissioner.

2. Briefly stated, the facts of the case are that Show Cause Notice dated 29.10.2007 (SCN) was issued to the assessee, M/s.Dewanchand Ramasaran Industries Pvt Ltd. which was previously adjudicated vide the Order dated 22.02.2008 whereby the demand of Service Tax as proposed in the SCN was confirmed alongwith interest, however, the entire penalty was dropped by invoking Section 80 of the Finance Act, 1994 (the Act). Both assessee and Department preferred appeals before the Tribunal. Appeal No. ST-81/2008 filed by Department was rejected on the very ground of maintainability holding that the Review Order passed by the Review Committee lacked jurisdiction. The assessee's appeal No. ST-88/2008 was allowed by way of remand with the direction that the documents which were relied against the assessee be provided to them and a reasoned order be passed in a time bound manner afresh by providing adequate opportunity of being heard.

The Department preferred an appeal before the Hon'ble Gauhati High Court against the rejection of Department's appeal by the Tribunal pertaining to setting aside of the penalty amount. The High

Court vide Order dated 04.06.2010 rejected the appeal filed by the Department upholding the order of the Tribunal with the finding that the very constitution of Review Committee was a nullity and hence, the appeal filed by the Department against the Commissioner's Order was not proper. Against the said High Court's order, the Department has further preferred an appeal before the Apex Court which is pending as on date. However, there is no stay of the operation of High Court's order as on date.

3. Shri R. G. Sheth, learned Advocate appeared for the assessee and Shri S.S.Chattopadhyay, learned Authorized Representative appeared for the Revenue.

4. The learned Advocate for the assessee has made detailed submissions challenging the impugned order dated 25.03.2009 passed *ex parte*, both on merits as well as on the ground of violation of principles of natural justice for want of effective hearing inasmuch as the learned Commissioner has failed to provide the contents of report dated 23.02.2008. He *inter alia* submitted that the portion of the earlier adjudication order dated 22.02.2008 whereby the entire penalty was dropped by invocation of Section 80 of the Act has attained finality since the Department's appeal has been dismissed both by the Tribunal and the Hon'ble High Court. For the aforesaid reason, there cannot be any occasion to hold that there was suppression on the part of the assessee and therefore, the entire demand confirmed by invoking extended period of limitation is liable to be quashed.

4.1 On merits, the learned Advocate disputed the classification of service under the category of 'Maintenance, Management & Repair Service' by submitting that the services have been provided by the appellant to ONGC for "Charter hire of work over Rigs" which cannot by any stretch of imagination be classified as 'repair or maintenance service'. He submitted that the said services at best could be said to have come into the Service Tax net subsequently under the category

of 'Mining service' w.e.f. 01.07.2007 or 'Supply of Tangible Goods services' w.e.f. 16.05.2008 and that the applicable Service Tax have been duly deposited by them which is being accepted by the Department. He further submitted that it is a settled legal position that when a particular service has been specifically brought in the Service Tax net by way of classification of taxable service subsequently, it can be said that the said service was not liable to Service Tax under previous notified service category. He relied upon several case laws including the decisions in the case of Indian National Shipowners' Association vs. UOI [2009 (14) STR 289 (Bom)], Shipping Corporation of India Ltd vs. CCE, LTU, Mumbai [2014 (33) STR 552 (Tri-Mum)], Jindal Drilling and Industries Ltd. vs. CST, Mumbai [2016 (41) STR 203 (Tri-Mum)], CST vs. Furgo Geonics Pvt Ltd. [2014 (33) STR 170 (Tri-Mum)], CST vs. Crisil Ltd [2018 (8) GSTL 16 (Bom)], etc..

4.2 He also disputed the impugned order by submitting that the learned Commissioner has not complied with the remand instructions by not providing the documents and by not affording adequate opportunity to represent the matter in person for want of documents which is also in violation of principles of natural justice and that the impugned order has been passed in haste by which the assessee has been saddled with a huge tax demand, which is bad in law.

4.3 The learned Advocate has also referred to the portion of the subject contract under which services have been rendered by the assessee to ONGC to buttress his argument that the service is not for repair or maintenance but for charter hire of workover rigs and that whatever repair activity has been done is for self to enable the assessee to execute the charter hire contract. He also referred to the communications exchanged between the Department and the service recipient, ONGC, on perusal of which it appears that ONGC has stated that there is no repair related activity undertaken by the assessee which fact has completely been ignored by the learned Commissioner in the impugned order.

5. The learned Authorized Representative for the Revenue reiterated the findings made by the learned Commissioner and supported the impugned order. He submitted that the demand has been rightly made under the category of 'Maintenance, Management and Repair service' and that since the appeal filed by the Department before the Apex Court is pending with regard to the portion of setting aside of penalty, no conclusion can be drawn to hold that there was no willful suppression on the part of the assessee. He submitted that since the Department is challenging the relief provided in the earlier adjudication order from imposition of penalty, they have preferred appeal before the Tribunal. He prayed that the appeal filed by the assessee be rejected being devoid of any merit.

6. Heard both sides and perused the appeal records in detail.

7. In so far as the merits of the case is concerned, the question to be decided is whether the subject service rendered by the assessee is classifiable under the category of Maintenance, Management or Repair service.

8. We have perused the subject contract which is appearing on page Nos. 30 to 99 of the appeal paper book. The contract is primarily for "Charter hire of workover rigs". The scope of work has been stated in Annexure – III appearing on page No. 85 of the appeal book, which *inter alia* states that, *"contractor shall be required to start work over, and if required, complete the development / exploratory wells for ONGC by deploying its mobile work over unit at such locations within the operating area as may be identified by ONGC, and to such depth as are designated by ONGC to exploit natural hydrocarbon in the form of oil & gas"*. Thereafter, in subsequent paragraph, it has been stated that other specified jobs shall also be carried out during the said work over operations, which are not limited to what has been expressly stated therein. Thereafter a list has been provided which the contractor may also be required to undertake like – (i) completion jobs comprising of single horizon, dual / multiple horizons completion,

completion with artificial lift system, gravel pick completion, (ii) workover for water shut off, gas shut off, etc. (iii) Repairs of wells for Casing leaks, bad cement job, damaged well head, (iv) service job of bottom cleaning, servicing of artificial lift, (v) transfer of well to a new horizon, (vi) finishing operations, (vii) Any other job that may come up during workover / servicing and so on. A detailed list has been stated thereafter for workover jobs in para 3.0 which are not being reproduced for the sake of brevity.

9. We find that the learned Commissioner, in page No. 7 & 8 of the impugned order, after having noted that aforesaid scope of work, has hurriedly concluded that the work is nothing but maintenance and repair of workover oil wells. No basis whatsoever has been assigned. He completely lost sight that the workover job has been desired by ONGC to complete the development and exploratory wells by deploying the mobile workover units at locations identified by ONGC to exploit natural hydrocarbons. On perusal of the above scope of work, we are not inclined to accept the conclusion reached by the learned Commissioner to hold that the service rendered by the assessee is for repair or maintenance. We have also perused the letter dated 25.01.2007 written by ONGC, which is appearing at page No. 167 of the appeal book, in response to the query raised by the Department, wherein it has been stated by ONGC that they have charter hired workover rigs from the assessee (appellant herein) for workover operations in various onshore oil fields of Assam Asset during the material period and that the workover rigs were owned by the assessee. It has also been expressly stated therein that ONGC has not hired operation and maintenance service from assessee.

10. We agree with the submissions made by the learned Advocate that no repair or maintenance service has been rendered by the assessee and whatever repair service has been undertaken is clearly incidental to the main service of hiring of workover rigs. The said service could not be taxed under the category of ‘Maintenance,

Management and Repair service'. We also agree with the submission that the said services have been appropriately brought within the tax net subsequent to the period in dispute under the category of Mining service or Supply of tangible goods, as the case may be. In view of the above findings, we are of the view that the impugned demand raised in the category of 'Maintenance, Management and Repair service' cannot be sustained and hence, set aside.

11. In so far as the pleadings made by the learned Advocate on limitation is concerned, we find that the learned Commissioner has not assigned any positive evidence to show that Service Tax has been deliberately not paid by the assessee. The only finding that has been made by the learned Commissioner is that the assessee has not intimated the fact of rendering the said service, which in view of the department is taxable under 'Maintenance, Management and Repair service'. On the basis of said findings, the extended period of limitation has been invoked, which in our view is also not proper and would not meet the test of law, more so in view of the fact that issue pertained to interpretation of taxability. Hence, on that count also, the demand confirmed by invoking the extended period of limitation fails.

In view of the above discussions, the impugned demand of Service Tax and interest are set aside and the appeal filed by assessee is allowed with consequential relief. The appeal filed by the Department is rejected.

(Order pronounced in the open court on 09 November 2020.)

SD/ SD/

(C.J.MATHEW)
MEMBER (TECHNICAL)

(P.K.CHOUDHARY)
MEMBER (JUDICIAL)

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