CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL

West Block No.2, R. K. Puram, New Delhi, Court No. 1

COURT –II

Date of hearing/decision: 25.06.2018

Appeal No. ST/53476/2015-(DB)

[Arising out of Order-in- Appeal No. 236/SLM/ST/JPR/2015 dated 29.06.2015 passed by the Commissioner (Appeals) Central Excise, Customs & Service Tax, Jaipur]

CCE & ST, Alwar Appellant

Vs.

Prime Engitech Pvt. Ltd. Respondent

Appearance:

Sh. G.R. Singh, DR for the appellant

Sh. Ajay Mishra, Advocate for the Respondent

Appeal No. ST/53631/2015-(DB)

[Arising out of Order-in-Appeal No. 236/SLM/ST/JPR/2015 dated 02.07.2015 passed by the Commissioner (Appeals) Central Excise, Customs & Service Tax, Jaipur]

Prime Engitech Pvt. Ltd. Appellant

Vs.

CCE & ST, Alwar Respondent

Appearance:

Sh. Ajay Mishra, Advocate for the Appellant

Sh. G.R. Singh, DR for the Respondent

Coram:

Hon'ble Mr. V. Padmanabhan, Member (Technical)

Hon'ble Mr. Ajay Sharma, Member (Judicial)

Final Order No._52322-52323/2018__

Per: V. Padmanabhan:

1. These two appeals are cross appeals filed by the assessee as well as Revenue and is directed against the Order-in-Appeal No. 236/2015 dated 02/07/2015.

2. The facts of the case are briefly that the assessee, during the period of dispute i.e. (11.02.2011 to 30.06.2012) has carried out the activity of modification and ornamentation of motor vehicles. On the motor vehicles such as tempo traveller given by the clients, the assessee has carried out the installation of goods such as air conditioners, carpets etc as well as carried out other minor modifications of the vehicle such as seating etc. On the consideration received for such activity, the Department noticed that the appellant has not paid Service Tax, even though the activities carried out by them do not amount to what can be described as 'manufacture' as defined under Section 2 (f) of

the Central Excise Act, 1944. The Department formed the opinion after investigation that the activities are liable for payment of Service Tax under the category of 'Business Auxiliary Service' defined under Section 65 (19) (v) as 'production or processing of goods for or on behalf of the client'. Accordingly, after issue of show cause notice, the Original Adjudicating Authority vide his order dated 31/12/2014, ordered payment of Service tax amounting to Rs 37,94,368/-. The order also included payment of interest as well as penalties under various Sections of the Finance Act, 1994. When the issue was carried before the Commissioner (Appeals), he passed the impugned order in which he gave relief to the extent of the value of goods used by the assessee in carrying out the modification of the vehicles. After granting such abatement under Notification No. 12/2003-ST, he restricted the demand of Service Tax to Rs. 6,65,223/- along with interest. He also set aside the penalties imposed. Aggrieved by the decision appeals have been filed by both sides.

3. In the appeal filed by Revenue, it has been argued that the lower Authority was not justified in deducting the value of the goods used in providing the said service. It has also been submitted that penalties would also be liable to be imposed in addition to demand of Service Tax.

4. In the appeal filed by the assessee, the entire demand of Service Tax has been challenged. It is the argument of the assessee that the activities carried out, cannot be considered to fall under the category of 'Business Auxiliary Service'. It is argued that the assessee has carried out the activity of modification of vehicle and installation of items such as air conditioners, carpets etc. Since there are no three parties involved in the activity, the levy of Service Tax under BAS is not justified. It is further argued that the entire consideration received have been offered for payment of VAT at the rate of 14 per cent considering the same as supply of goods. Consequently, there is no justification to levy Service Tax on the consideration even with abatement.

5. In this connection, we heard Shri G.R. Sigh and Shri Ajay Mishra, Ld. Counsels for both the parties.

6. We have carefully considered the facts of the case and the arguments raised on both sides.

7. The facts of the case are not in dispute. The assessee has carried out the work of carrying out minor modifications in motor vehicles. They have done the activities such as installation of air conditioners, addition of carpets, modification of seats, painting etc. It is also on record that the assessee has considered the entire consideration received as supply of goods and has also offered the full consideration for payment of VAT.

8. It is the argument of the assessee that the activity is not covered within the definition of BAS- as 'production or processing of goods for on behalf of the clients'. We note that in the facts of the present case, there are only two parties- the appellant as well as their customer. The customer has handed over the motor vehicle for carrying out the minor modifications to the assessee. It cannot be said in the facts of the present case that such processing has been done on behalf of a third party. We fail to see the third party in the transaction which is a requirement for considering the activity as covered by BAS.

9. Further, the entire activity has been considered and declared by the assessee as a supply of goods and VAT also stands paid. The levy of VAT as well as Service Tax is mutually exclusive and once the transaction has been considered and declared as sale of goods it is not open to reopen transaction and consider it as service.

10. In view of the above discussions, we find no merit in the impugned order and the same is set aside. In the result, the appeal field by assessee is allowed and the appeal field by Revenue is rejected.

(Dictated and pronounced in the open Court) (Ajay Sharma) (V. Padmanabhan) Member (Judicial) Member (Technical) Rekha