Legal Update

Service Tax

LD/66/113
Front Line Builders and Developers vs. Commissioner of Central Excise, Customs and Service Tax
4th December, 2017

Total value of taxable service not challenged, only different interpretation on classification of services; it cannot tantamount to substantial mis-declaration, VCES cannot be disregarded.

Frontline Builders and Developers ('the Assessee') is engaged in the business of construction of residential and commercial complexes. It filed a declaration under the Service Tax Voluntary Compliance Encouragement Scheme (VCES). In the VCES filed, the Assessee declared service tax liability for the period April 2011 to December 2012 and paid service tax accordingly. On the total value of taxable services declared in the VCES, the Assessee claimed abatement of 75% as per Notification No. 26/2012-ST (in respect of cost of land) and paid balance dues under category of construction of complex services (CCS).

The Revenue on the other hand contended that said activity has been declared as 'works contract' service (WCS) under returns filed by the Assessee before VAT Department. The Revenue demanded for extra service tax along with interest and penalties by alleging that in the declaration made by the Assessee, he had failed to declare his service tax liability properly and that there was a substantial mis-declaration of service tax dues. Accordingly, citing substantial mis-declaration against assessee, Revenue sought to deny the benefit of abatement to them and re-classify the service under WCS.

Before the CESTAT, the Assessee contended that, definition of WCS under Finance Act, 1994 as well as respective State Government Act is different and the services rendered by assessee is rightly classifiable under CCS as consideration also includes cost of undivided share of land transferred after construction of apartments.

CESTAT noted that there is no difference found by the Revenue in the total consideration declaration made by the Assessee; the adjudicating authority has only taken a different view on classification of assessee's service. Then CESTAT stated that "*VCES was framed by the Government with the intention of encouraging voluntary compliance and payment of service tax. The declarations made under such scheme were to be accepted, by and large*".

On the power of reopening the declarations, CESTAT noted that the power was given to the jurisdictional Commissioners to reopen such declarations only in cases where they were found to be substantially mis-declared. CESTAT opined that in the present case, Revenue merely noticed that same services were declared to be WCS for the purposes of VAT assessment. Further, Revenue has not made out a case of substantial mis-declaration in this case absent any contract or document which indicates that assessee has not made full declaration of service tax liability for the disputed period. As Revenue has only taken a different interpretation on classification of services, it cannot tantamount to substantial mis-declaration, and thus, VCES cannot be disregarded.

LD/66/114
CCE vs. Maharashtra Industrial Development Corporation
23rd August, 2017

Service fees/service charges collected by Industrial Development Corporation (IDC) from plot holders, for providing amenities in industrial estates such as roads, water supply, street lighting, drainage etc., are in the nature of compulsory levy imposed by IDC while performing its statutory functions, hence are not chargeable to service tax.

Facts:

Revenue alleged that service charges/service fees collected by respondent MIDC from the plot owners/plot allottees for providing them various facilities including maintenance, management and repairs of facilities in the MIDC's Industrial area, are liable to service tax under category of 'maintenance, management and repair services' and confirmed service tax demand on respondent. During appellate proceedings, Tribunal allowed appeal filed by respondent and set aside impugned demand, aggrieved by which, revenue preferred present appeal.

Held:

Hon'ble HC noted that preamble to Maharashtra Industrial Development Act, 1961 (MID Act) shows that said Act has been enacted for establishment of MIDC for securing orderly establishments of industrial areas and industrial establishments of industries in state of Maharashtra and for assisting generally in the organisation thereof; that Section 14 of MID Act, which provides that function of

MIDC is not only to develop industrial areas but to establish and manage industrial estates. Further, it was observed that in *Ramtanu Cooperative Housing Limited and Anr. vs. State of Maharashtra and Ors. AIR 1970 SC 1771*, Hon'ble Supreme Court held that the functions and powers of Industrial Development Corporation indicate that the corporation is acting as wing of state government in establishing industrial estates and developing industrial areas, acquiring property for those purposes, constructing buildings, allotting buildings, factory sheds to industrialists or industrial undertakings. Therefore, HC held that the role of MIDC is not limited only to establishing industrial estates and allotting the plots or buildings or factory sheds to industrial undertakings, but the functions and obligations of MIDC is also to manage and maintain said industrial estates established by it, therefore, it is statutory obligation of MIDC to provide and maintain amenities in its industrial estates such as roads, water supply, street lighting, drainage etc. Accordingly, HC held that service fees/service charges collected by MIDC are in the nature of compulsory levy, which is used by MIDC in discharging its statutory obligations and thus, not chargeable to service tax. Thus, HC dismissed revenue's appeal holding that no substantial question of law arose.

LD/66/115

IILM Undergraduate Business School

vs.

CCE

1st November, 2017

Tribunal held that the course conducted by Indian educational institution for which degree is awarded by foreign university and such degree is recognised in India, no service tax demand would sustain under category 'commercial training and coaching services' and such course fees would be exempt.

Facts:

The assessee is conducting recognised educational course for which degree is awarded by a foreign university in UK. Revenue entertained a view that as the course conducted by appellant is not recognised by any statutory authority in India, consideration received by appellant assessee from students for conducting said course is chargeable to service tax

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under category of 'commercial training and coaching services'. While rebutting department's contention, appellant submitted that the said foreign university is accredited member of Association of Common Wealth Universities (ACWU) and the Association of Indian Universities (AIU) recognised accreditation by ACWU for foreign universities courses; also vide press release dated 22.04.2003, Ministry of Human Resource Development, Govt. of India (MHRD) clarified that AIU is mainly concerned with recognition of degrees, diplomas awarded by accredited universities in India and abroad for the purpose of admission to higher courses at Indian Universities. Appellant further submitted that said degree by foreign university was also recognised by Indira Gandhi National Open University (IGNOU).

The adjudicating authority recorded a finding that course conducted by appellant is not recognised as degree by AICTE or any other Indian university or deemed university; that if the course is not recognised by a university or an authority created under any law for grant of diploma or certificate then the course will not be excluded from the scope of taxable service. AA held that the recognition of course conducted by IGNOU for the purpose of granting admission to PG course would not amount that degree is conferred by or under the approval of IGNOU. As regards recognition by AIU, AA took a view that though AIU is a coordinating agency and plays an important role for sharing and furnishing cooperation in the field of education, it is not a statutory body empowered to approve course for grant of degree/diploma recognised by law for the time being in force. Further, revenue also relied upon decision of the Hon'ble Madras HC in *Academy of Marytime Education and Training Trust 2014-TIOL-1327-HC-MAD-ST*.

Held:

Hon'ble Tribunal noted that the education system in India is coordinated by several agencies; while the university system falls within jurisdiction of UGC, professional institutions are coordinated by different bodies like AITE, MCI, ICMR, ICAR etc. Another coordinating agency is AIU and all the universities and equivalent institutions are members of AIU. Further, MHRD has clarified that AIU is entrusted with recognition of degrees or diplomas awarded by accredited universities in India and abroad for the purpose of admission to post graduate course by said university. Tribunal referred to its own decision in case of *M/s ITM International Pvt. Ltd. 2017-TIOL-3635-CESTAT-DEL* wherein it was found that MHRD vide Notification dated 13.03.1995 stated that GoI has decided that those foreign qualifications which are recognised or equated by the AIU are treated as recognised for the purpose of employment services under central government and no separate orders for recognition of such foreign qualifications is needed to be issued and accordingly, it was held that courses offered by appellants resulting in issue of certificate by foreign university which is treated as equivalent to degree or diploma issued by Universities in India, would be falling outside scope 'commercial training and coaching services'.

Further, Tribunal distinguished from decision in *Academy of Maritime Education and Training Trust (Supra)* on a finding that in present case, dispute pertains to educational activity which is not claimed for exclusion under vocational training; the exclusion is claimed on the basis that degree awarded on completion of course is recognised degree. Therefore, impugned demand was set aside by holding that course conducted by appellant for which degree is awarded by foreign university would get covered under exclusion category specified for educational services and not liable to service tax under 'commercial training and coaching services'.

LD/66/116

Mrudula Pradeep Mehta

vs.

Commissioner of Service Tax I, Mumbai

7th December, 2017

Late fees under Rule 7C are not attracted if service tax returns are filed manually within stipulated due date and subsequently filed electronically.

Facts:

The assessee filed service tax returns manually (instead of electronically) within prescribed due date for filing returns and later on filed the same electronically. Revenue alleged that there was delay in filing ST-3 returns and thus, imposed late fees on appellant in terms of Rule 7C of Service Tax Rules, 1994.

Held:

Hon'ble Tribunal held that said Rule 7C prescribes late fees only for delay in filing return; however said rule is silent on penalty if the service tax

returns are filed manually in time although not filed electronically. Accordingly, as appellant had filed manual returns within prescribed time, Tribunal set aside impugned OIA deleting the demand for late fees.

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LD/66/117
Ruchi Infrastructure Limited
vs.
CCE, Indore
7th November, 2017

Tribunal held that when premises owned by one of the parties to the joint venture is made available for conducting activity of joint venture, there cannot be said to be a renting of immovable property so as to attract service tax.

Facts:

Appellant owned various premises which can be used for warehousing facility. They entered into joint venture agreement with warehousing corporation wherein appellants provided their premises for storing goods brought by the depositors, which are warehoused and maintained by warehousing corporation. Revenue demanded service tax from appellant by alleging that amount of consideration received by appellant from warehousing corporation is liable to be taxed as premises of the appellant were rented out to warehousing corporation to be used for business or commerce.

Held:

Hon'ble Tribunal noted that the agreement itself states the intent of the joint venture agreement of partnership between appellant and state warehouse corporation, wherein responsibilities are identified for each parties and it provided that the consideration to be accrued to both the parties specifically to be identified out of common total income, warehousing corporation undertakes certain activities over and above the storage fee (which is sharable). Further, reliance was placed on decision of Hon'ble Supreme Court in case of *Gujarat State Fertilizers and Chemicals Ltd. & Anr. - 2016 - TIOL-198-SC-ST* and the decision of the Tribunal

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in *Mormugao Port Trust 2016-TIOL-2843-CESTAT-MUM*, holding that joint venture agreements are not liable to service tax. Accordingly, Tribunal held that the agreement between the appellant and warehousing corporation is more in the nature of joint venture than a simple rent agreement for usage of immovable property and thereby allowed present appeals by setting aside impugned service tax demand.

LD/66/118

Andhra Pradesh State Road Transportation Company vs. CCCE&ST

24th October, 2017

Tribunal held that services of providing buses (primarily used for passenger transportation in state) on hire to private customers for marriage functions, pilgrim places etc. by state transport corporation, would neither be covered under Section 66D(o) nor under entry (23) of Notification No. 25/2012-ST and thus, liable to service tax because as a result of such hiring, the buses loose characteristic of 'stage carriage' and would be regarded as 'contract carriage or special permit carriage'.

Facts:

Appellants are engaged in operation of buses in the State of Andhra Pradesh for public transport and also provided buses for marriage functions, pilgrimage places etc. to private persons on commercial consideration. Revenue alleged that appellants are providing 'rent-a-cab services' and confirmed service tax demand along with imposition of penalties for period 'June 2007 to September 2015'. Appellant submitted that the buses operated by State Transport Undertaking are "stage carriage" vehicles which are mainly used for passenger transportation and spare buses as well as normal buses, which are "stage carriages" are used for giving on hire to various customers and the possession and control of the vehicles is not transferred to customers but always remains with appellants, therefore, demand under category of 'rent-a-cab service' is not sustainable. Further, it was submitted that buses operated by them are "stage carriage vehicles" and are used for purposes like marriage functions, pilgrimage, by obtaining a special permit under Section 88(8) of Motor Vehicles Act, according to which special permit can be granted to stage carriage vehicles as well as contract carriage vehicles.

W.e.f. 01.07.2012, in terms of Section 66D(o) of Finance Act, 1994 services of passenger transportation by a Stage Carriage are not chargeable to service tax and in terms of Sr. No. (23) of Mega Exemption Notification No. 25/2012-ST dated 20.06.2012, transportation of passengers by a contract carriage for the transportation excluding tourism, conducted tour or hire were exempted from service tax. Accordingly, appellant submitted that while giving exemption to non-air-conditioned contract carriage, it has been specifically provided that such exemption would not apply for "tourism, conducted tour, charter or hire"; but since no such exclusion is provided in Section 66D(o) in respect of 'stage carriages', when 'stage carriage' vehicles are used for transportation of passengers even for purpose of tourism, conducted tour, charter or hire, no service tax can be demanded. Thus, issues before Tribunal in present appeal are as to (i) whether for period up-to 01.07.2012, hire charges collected by appellant would attract levy of service tax under rent-a-cab service and (ii) whether same activities would be chargeable to service tax from 01.07.2012 in light of Section 66D(o)?

Held:

Tribunal held that after amendment in definition of 'motorcab' u/s. 65(20) in 2007, the term "cab" would cover buses also. Relying on decision of Hon'ble HC in case of *C&CE vs. Sachin Malhotra 2015 (37) S.T.R. 684 (Uttarakhand)* holding that unless controlling of vehicle is made over to hirer and he is given possession for howsoever short period to deal with the vehicle, there would be no renting in present case, Tribunal held that for period up-to 30.06.2012, hire charges collected by appellant for giving buses on hire for marriage, pilgrim functions would not be chargeable to service tax under 'rent-a-cab service'.

As regards demand pertaining to period after 01.07.2012, by observing various provisions of Motor Vehicles Act, 1988, Hon'ble Tribunal opined that for a vehicle having 'stage carriage' permit like buses owned by appellant, to operate for private persons/marriage parties under contract, such buses will then necessarily be required to obtain a contract carriage permit or a special permit; once such a contract carriage permit or special permit is obtained, the bus will then no longer have the

character of stage carriage but will instead acquire the color of contract carriage or special permit carriage. Therefore, Tribunal held that buses of appellants, having become "contract carriage or special permit carriage" even if for temporary permit to provide them on hire for marriage/pilgrims etc., they cannot be considered as stage carriage for that short period and hence, cannot then be claimed to be covered under negative list as a stage carriage for transportation of passengers, or under entry (23) of mega exemption notification as said entry does not cover contract carriage on hire. Accordingly, Tribunal upheld service tax demand for period after 01.07.2012; however, penalties were set aside as the issue involved is one of interpretation and the question of taxability on the services was mired in confusion and litigation.

LD/66/119
Ticketpro India Pvt. Ltd.
vs.
CST, Bangalore
8th September, 2017

Once original authority has set aside penalty by invoking Section 80, revisionary authority cannot impose penalty.

Facts:

In the order-in-original, the adjudicating authority refrained from imposing penalties u/s. 76, 77 and 78 by extending benefit of Section 80. Thereafter, by exercising power of revisionary authority, department imposed penalty u/s. 78 upon appellant modifying order of original authority.

Held:

Tribunal allowed present appeal by holding that in light of decision of Hon'ble Karnataka HC in *Motor World [2012 (27) STR 225 (Kar.)]*, holding that when the assessing authority in its discretion has held that no penalty is liable, by resorting to Section 80 of the Act, then the Revisionary Authority cannot invoke his jurisdiction under Section 80 for imposing penalty.

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