

**Rites Limit Vs. The Commissioner of Central Excise and C**

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**Court :** Andhra Pradesh

**Decided On :** Nov-27-2014

**Judge :** The Hon'ble Sri Justice L.Narasimha Reddy and the Hon'ble Sr

**Appellant :** Rites Limit

**Respondent :** The Commissioner of Central Excise and C

**Judgement :**

THE HONBLE Sr.JUSTICE L.NARASIMHA REDDY AND THE HONBLE Sr.JUSTICE CHALLA KODANDA RAM W.P.No.23801 of 2003 27-11-2014 RITES Limited.Petitioner The Commissioner of Central Excise and Customs Service Tax Cell and others..Respondents Counsel for the petitioner : Sr.G.Mohan Rao Counsel for respondents: Jalakam Satyaram ?.Cases referred: THE HONBLE Sr.JUSTICE L.NARASIMHA REDDY AND THE HONBLE Sr.JUSTICE CHALLA KODANDA RAM W.P.No.23801 of 2003

ORDER

: (Per LNR,J.The concept of levy of service tax has been introduced to garner the resources for the State, by bringing certain profit making activities under its purview.

Over the period, the phenomenon of service tax has grown to such an extent that a negative list is now maintained in the context of identifying an activity not covered by the Service Tax Act, 1998 (for short the Act).Obviously because of the

pervasive and far-reaching nature of the provisions of the Act, certain authorities, who are endowed with the powers under the Act, have virtually become law unto themselves.

Though such a phenomenon may have started with reference to some assesseees, the tendency, if percolates into mind of an officer, refuses to differentiate between the ordinary assesseees and the Government organizations.

The petitioner is a Government of India undertaking brought into existence by the Indian Railways, for the purpose of rendering high level consultancy and technical services.

The Act came into existence in the year 1998 and the petitioner got itself registered under it.

In the year 1998, it entered into a contract with Bharat Sanchar Nigam Limited (BSNL) and rendered its services in the matter of laying optic fiber cables.

The petitioner entered into another contract with BSNL for rendering consultancy services for, and the execution of the work of laying optic fiber cables and installation of equipment.

Being under the impression that the services rendered by it under the contract are liable for levy service tax, it remitted service tax at the rate of 5% aggregating to Rs.14,19,850/-.

However, it emerged that the activities undertaken by it are not in the purview of the service tax.

The petitioner made a representation on 23.01.2002 to the Assessing Officer for refund.

The representation was rejected by the 3rd respondent on 31.03.2002.

Aggrieved by that, the petitioner filed appeal before the 2nd respondent.

Through his order, dated 19.02.2003, the 2nd respondent took the view that the claim made for refund, after expiry of one year cannot be entertained and at the same time, the petitioner can take other steps for recovery of the amount.

The appeal was partly allowed, in respect of the amount paid between 23.01.2001 and 31.03.2001, subject to placing proof to the effect that the liability was not passed on to the customer.

It is in this background, that the writ petition is filed.

The petitioner contends that the remittance of service tax was made due to inadvertence and being a responsible official of the Government, the 3rd respondent ought to have taken steps for refund without any objection.

It is pleaded that the principles underlying Section 11-B of the Act, particularly, of time limit, need not be applied to the present case, since the petitioner is an Agency of the Government of India.

On behalf of the respondents, a detailed counter affidavit is filed.

It is stated that though the activity as regards which the service tax was paid was not under the purview of the Act at the relevant point of time, the Central Board of Excise and Customs (for short the Board) issued a Circular, dated 18.12.2002 stating that the activity is very much under the purview of the Act.

It is also pleaded that the petitioner is not entitled for refund, since it did not furnish the required proof and the claim is made beyond the period of limitation.

An objection is also raised as to the very maintainability of the writ petition.

We are indeed shocked to note the manner in which the 3rd respondent has treated the petitioner herein.

It appears that the officials are accustomed to give rough treatment to assessees and in the process, they did not differentiate between the Government of India undertaking and an ordinary assessee.

Being a responsible and disciplined organisation, the petitioner remitted a sum of Rs.14,19,850/- towards service tax, though the activity undertaken by it was not in the purview of the Act.

That was at the inception of the Act.

The Deputy Commissioner i.e., 3rd respondent was supposed to advise the petitioner properly.

However, the remittances were received, without proper verification.

Atleast when the claim for refund was made, the matter ought to have been examined objectively.

An order of rejection was passed on 31.03.2002 almost on mechanical lines.

The 2nd respondent i.e., Commissioner did exhibit objectivity, and acted reasonably.

Relief was granted as regards the amounts paid between 23.01.2001 and 31.03.2001, subject to furnishing of proof to the effect that the burden was not passed on to the customer. He expressed his inability to overcome the rigor of limitation under Section 11-B of the Act as regards substantial part of the claim.

At the same time, he left it open to the petitioner to pursue other remedies.

The 3rd respondent did not comply with the directions part of the order passed by the 2nd respondent, and refused to refund any amount to the petitioner.

Once the petitioner asserted that it did not pass on the liability of service tax to its customer i.e.BSNL, it could have been verified as to whether BSNL paid any amount to the petitioner towards service tax.

The irresponsibility on the part of the incumbents, who held the office of the 3rd respondent from time to time, is evident from the fact that they just sat over the matter and did not release even a single rupee to the petitioner.

If this is the treatment accorded to a Government of India undertaking, one can easily understand the type of treatment, which the officials of that Department are exhibiting towards ordinary citizens.

Another objectionable attitude exhibited by the 3rd respondent is evident from the counter affidavit itself.

The ground, which was not raised either when the order dated 31.03.2002 was passed or before the appellate authority, is stated in paragraph 12 of the counter affidavit.

It is to the effect that the Board issued Circular, dated 18.12.2002 clarifying that the activity of laying of cables and erection of equipment would attract service tax, since it falls under the technical assistance rendered by Consulting Engineer.

The lack of bona fides on the part of the deponent of the counter affidavit is evident from the fact that though the very Board issued Circular dated 13.05.2004 stating that the Circular dated 18.12.2002 was issued by mistake and stands withdrawn, no reference was made to it.

The attitude of the deponent is worse than that of a seasoned litigant.

Unfortunately, it is on account of the irresponsible behaviour of such officers that the entire Department gets bad reputation.

By resorting to objectionable means, the Department is trying to enrich itself, at the cost of the petitioner.

We therefore allow the writ petition and direct that the amount of Rs.13,08,811/-, which remained unpaid, shall be refunded to the petitioner with interest, as provided for under the Act, within four (4) weeks from today.

If the amount is not refunded, the official who is holding office of the 3rd respondent shall be held personally responsible in the event of any proceedings initiated under the Contempt of Courts Act and this Court would consider the feasibility of issuing directions for making adverse entries in the service record of such officer.

The miscellaneous petition filed in this writ petition shall also stand disposed of.

There shall be no order as to costs.

\_\_\_\_\_ L.NARASIMHA REDDY, J \_\_\_\_\_

CHALLA KODANDA RAM, J Date: 27.11.2014

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