CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Service Tax Appeal No. 50600 of 2018 [DB]

[Arising out of Order-in-Original No. RPR/EXCUS/000/COM/ST/054/2017 dated 09.11.2017 passed by the Principal Commissioner of Central Tax, Central Excise & Customs, Raipur]

M/s. Jindal Steel & Power Ltd. **...Appellant**
Kharsia Road, Raigarh,
Distt. Raigarh, Chattisgarh

VERSUS

Commissioner of Central Excise and Service Tax, Raipur **...Respondent**
Central Excise Building,
Dhamtari Road, Tikrapara,
Raipur, Chhattisgarh - 492001

APPEARANCE:
Shri B.L. Narasimhan, Ms. Sukriti Das and Ms. Mahek Mehra, Advocates for the Appellant
Shri S.K. Meena, Authorized Representative for the Respondent

CORAM:
HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE MRS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

DATE OF HEARING: 03.01.2024
DATE OF DECISION: **03.05.2024**

FINAL ORDER No. 55726/2024

DR. RACHNA GUPTA

Present appeal is arising out of the Order-in-Original No. 054/2017 dated 09.11.2017. The relevant facts for the adjudication, in brief, are as follows:

1.1 The appellant, M/s. Jindal Steel & Power Ltd. (hereinafter referred as M/s. JSPL), Raigarh, is engaged in providing various taxable services. The records of the appellant for the period April 2010 to March 2012 were scrutinized by the audit team of the department. It was observed that during the said period an

amount of Rs.29.79 crore, Rs.19.97 crore and Rs. 17.04 crore for the Financial Year 2010-11, 2011-12 and 2012-13 respectively were received by the appellant on account of aviation income but service tax on the same has not been paid resulting into non-payment of Rs.5.13 crore of service tax by the appellant. Despite being specifically asked, the appellant is alleged to have failed to provide unit wise and year wise information in respect of amount received as aviation income by the appellant or by its other unit at Delhi and the service tax, if any, paid. Due to the lack of evidence, it was opined that the appellant has not shown the whole taxable amounts received/receivables by it as aviation income in respect of service "by airport authority or by any other person, in any airport or a civil enclave" and "transport of goods by aircraft" provided or agreed to be provided by the appellant during the impugned period. Thus, it is alleged that service tax has not been paid by the appellant. Resultantly vide Show Cause Notice No. 17146 dated 21.10.2015 was issued and service tax amounting to Rs.7,47,14,140/- was proposed to be recovered along with the proportionate interest and the appropriate penalties. The said proposal has been confirmed vide the Order-in-Original No. 054/2017 dated 09.11.2017. Being aggrieved the appellant is before this Tribunal.

2. We have heard Shri B.L. Narasimhan, Ms. Sukriti Das and Ms. Mahek Mehra, learned Advocates for the appellant and Shri S.K. Meena, learned Authorized Representative for the department.

3. Learned counsel for the appellant has mentioned that the show cause notice is absolutely vague as service tax from the appellant at Raigarh Unit has been demanded, however, in respect

of aviation income attributable to its Delhi Unit on the basis of consolidated balance sheet of all units of M/s. JSPL. Unit of JSPL, located at New Delhi is engaged in providing aviation services in respect of the aircrafts owned by them and also has Non-Scheduled Operator permits issued from Directorate General of Civil Aviation (in short 'DGCA'), JSPL Delhi is separately registered with the Service Tax Department vide Registration No. AAACJ7097DST013 for discharging service tax in respect of chartering of the aircrafts under the category of "Supply of Tangible Goods" for use (in short, 'STGU") classifiable under Section 65(105)(zzzzj) of the Finance Act, 1994. Since, the entire aircraft along with crew and pilot were for exclusive transportation of their customers while retaining the control and possession of the said aircraft, appropriate tax was discharged under STGU. In respect of another type of arrangement, i.e., Dry Leasing, JSPL Delhi had sub-leased its aircrafts to the sub-lesee vide agreements dated 2.1.2006 where the possession and effective control of the said aircraft was transferred to the sub-lessee. Since, such transfer of right to use goods amounted to deemed "sale" in terms of Article 366(29A) of the Constitution, such service falls outside the purview of service tax net by virtue of Section 66E of the Finance Act, hence, no tax was paid by JSPL Delhi on the activity of Dry leasing arrangement. The receipts attributable to 'Chartering Services' and 'Dry Lease Arrangements' were booked as 'Aviation Income' in the consolidated Balance sheet pertaining to whole group of JSPL, i.e. JSPL, Delhi as well as Appellant.

3.1 It is also mentioned that pursuant to the letter of Range Superintendent, Raigarh, dated 29.09.2015, the appellant vide its letter dated 16.10.2015 had provided the bifurcation of the income receipts from both the said activities but the same has been ignored by the audit authorities while issuing the show cause notice (SCN), thus SCN is outcome of presumption. Those documents have not been considered even by the adjudicating authority. The service tax on the impugned activity has otherwise been discharged by the Delhi unit of the appellant. The same has been categorically recorded by the adjudication authority as well. However, the C.A. Certificate dated 10.03.2016 filed by the appellant in its support has been misread by the adjudicating authority. Learned counsel has also objected that demand has been confirmed under two different categories of service for one single activity. Learned counsel has relied upon the following decisions:

(i) BCC Contractors & Promoters Pvt. Ltd. Vs. Pr. Commr. Of S.T., Delhi-I reported as 2022 (65) GSTL 366 (Tri.-Delhi)

(ii) Micromatic Grinding Technologies Ltd. Vs. CCE & ST, Ghaziabad, reported as 2019 (8) TMI 320 – CESTAT Allahabad

(iii) Shubham Electricals Vs. CST & ST, Rohtak, reported as 2015 (6) TMI 786 – CESTAT New Delhi affirmed by Hon'ble Delhi High Court in Pr. Commissioner, Service Tax-Delhi Vs. Shubham Electricals, reported as 2016 (5) TMI 1055 – Delhi High Court.

3.2 Finally, it is impressed upon that show cause notice is barred by time. The entire demand is raised by invoking the extended period. Learned counsel has relied upon the following decisions:

(i) Raghuvar (India) Ltd. Vs. Commissioner, Central Excise Commissionerate, Jaipur reported as 2023 (1) TMI 932 – CESTAT New Delhi

(ii) HLS Asia Ltd. Vs. Commissioner, Service Tax Commissionerate, New Delhi reported as 2023 (3) TMI 379 – CESTAT New Delhi

Accordingly, the order under challenge is prayed to be set aside and the appeal is prayed to be allowed.

4. While rebutting these submissions, learned Departmental Representative has vehemently denied that C.A. Certificate has been misread by the adjudicating authority and that the appellant had given the proper bifurcation. It is mentioned that the income as was shown in ST-3 Returns of Delhi Unit under the head 'airport services' is not found tallying with the C.A. Certificate issued by M/s. Amarjeet Singh & Association which is in respect of aviation income. It is submitted that their Delhi unit has declared Rs.2,47,94,170/- during the period April 2012 to June 2012 under "Airport Services" in their ST-3 Returns, for the services provided by the Airport Authority, on which they have paid service tax under reverse charge mechanism. Therefore, the contention of the notice that entire aviation income belongs to their Delhi Unit and the service tax liability has been discharged by them, is not acceptable. It is further mentioned that appellant did not provide any documentary evidence in support of the claim that the services in question have been provided from Delhi Unit in respect of the income shown in their annual reports for the period in question. The tax paid by Delhi Unit is with respect to the services provided by the Airport Authority in Delhi. The unit otherwise has separate service tax registration. In the light of these submissions, no

infirmity is impressed upon in the order under challenge. Appeal is accordingly prayed to be dismissed.

5. Having heard the rival contentions, perusing the records. We observe following apparent facts:

(i) Appellant is a company engaged in manufacture of sponge iron etc., however, they are also registered for payment of service tax as a provider of service as well as the recipient of service under reverse charge mechanism.

(ii) Appellant is one of the units of M/s. JSPL, at Raigarh. The another unit of M/s. JSPL is in Delhi having a separate service tax registration.

(iii) M/s. JSPL Delhi has obtained a Non Scheduled Operator Permit (NSOP) from the Director General of Civil Aviation (DGCA) to provide services by way of chartering the aircrafts owned by M/s. JSPL Delhi itself but retaining the control and possession of said craft with them.

(iv) It is on record that M/s. JSPL, Delhi has discharged its service tax liability of Rs.6,65,23,231/- on the amount as has been received for the period April 2010 to March 2013 from the income received for the said activity of chartering the aircrafts.

(v) JSPL Delhi in another arrangement of Dry Leasing has sub-leased its aircraft to the sub-lessee vide agreements dated 02.01.2006 where the effective control and possession of the aircraft was transferred to sub-lessee.

(vi) M/s. JSPL being a body corporate, a consolidated balance sheet is prepared including the transactions undertaken at both Raigarh and Delhi Units with respect to both kinds of transactions under "aviation income".

6. It is the plea of the appellant that the amount as has been picked up by the department from their balance sheet under the head "aviation income" is the consolidated amount received towards chartering activity along with the amount received for another activity of M/s. JSPL Delhi Unit itself i.e. of leasing out its aircrafts under dry lease system transferring the possession as well as entire control itself to the lessee. We observe that the adjudicating authority has not accepted the said contention holding that the documentary evidence in respect of payment of service tax by Delhi Branch has not been provided by the appellant. It has also been alleged that the appellant has not assessed correct amount of service tax on the services provided by it as "by airport authority or by any other person, in an airport or a civil enclave."

7. We find that the detailed breakup of aviation income was given by the appellant as Annexure – 7 to their reply to the show cause notice dated 17.03.2016. Copies of ST-3 Returns filed by M/s. JSPL Delhi during the relevant period were also enclosed therewith as Annexure – 6. The invoices raised by M/s. JSPL in respect of the chartering services were also annexed as Annexure-5. With respect to the other activity of dry leasing, the agreement dated 02.01.2006 was also provided as Annexure-8 thereof. The said agreement was between M/s. JSPL Delhi and India Flysafe Aviation Ltd. for leasing out a jet aircraft with possession solely at

the risk of the lessee along with the maintenance and insurance thereof. Thus the arrangement was not merely of supply of goods but was of transfer of possession with effective control. Hence the transaction cannot be called as supply of tangible goods as it was in another transaction as discussed above. The later tansactions of Dry Lease since is transfer of right to use, it amounts to 'deemed sale', the concept under Article 366 (29A) of the Constitution of India. Thus being out of the scope of service tax.

8. The documents on record establish that the income shown in the returns as well as balance sheet is one amount under the head of "aviation income" but the activities performed are two separate activities. One is Supply of Tangible Goods by chartering the aircraft and another is dry leasing the aircrafts along with all its control and possession. The said activity of leasing out the aircraft with all rights of use therein to the lessee, to our understanding is a deemed sale under Article 366 (29A) of the Constitution and thus is excluded from the charge of service tax under Section 65(105)(zzzzj) and Section 66B of the Act. Thus, it becomes clear that the income earned by M/s. JSPL, Delhi from dry leasing arrangements is not chargeable to service tax during the relevant period but value for this activity is included in the impugned amount.

9. In the given circumstances, it was mandatory for the department as well as the adjudicating authority to take note of the bifurcation which was provided by the appellant at very initial stage of filing reply to the show cause notice and also the C.A. Certificate dated 10.03.2016 filed subsequently. Since these relevant

documents have been ignored by the authorities and we do not find any other evidence to show that the total amount shown in the balance sheets for the impugned period from April 2010 to March 2013 on which the service tax amounting to Rs.7,47,14,140/- has been confirmed against the appellant was an amount towards rendering the chartering activity/the service of supplying of tangible goods.

10. We also observe that confirmation of tax demand by the Principal Commissioner, Raipur is against the appellant i.e. M/s. JSPL, Raigarh Unit on the income receipt of M/s. JSPL, Delhi Unit in relation to the activities performed by M/s. JSPL, Delhi is not sustainable.

11. Also when some amount was received by M/s. JSPL Delhi. Not only this, confirmation of impugned demand is beyond the territorial jurisdiction of Principal Commissioner, Raipur. We draw our support from the decision of this Tribunal in the case of **Commissioner of Central Excise, Jaipur-I Vs. Tahal Consulting Engineers Ltd. reported as 2016 (44) STR 671 (Tri-Del.),** wherein it was held that when the services have been rendered outside the jurisdiction of commissionerate issuing the show cause notice and the service tax with respect to said services stands already discharged to the concerned commissionerate, the departmental authority (at Jaipur in that case) has no jurisdiction to proceed against the assessee for demanding service tax without any evidence of taxable service being provided within their jurisdiction. Thus, the commissionerate, Raipur had no jurisdiction to issue the show cause notice demanding the tax for such service

which was provided by the appellant's unit in Delhi. Order is liable to be set aside on this ground.

12. Finally coming to the issue of time bar, we observe that the show cause notice of October 2015 has raised the demand of April 2010 to March 2013. Appellants have sufficiently proved that the amount in question is an amount received by M/s. JSPL Delhi Unit against chartering their crafts. The said amount also includes an amount received from deemed sale (dry leasing the aircrafts). Department has not produced any evidence to falsify the said contention and to show that those activities were rendered by M/s. JSPL, Raigarh. The tax on the amount receipts stands already discharged by M/s. JSPL Delhi. Thus, it becomes crystal clear that the present is not at all a case of tax evasion. Appellant was regularly filing the returns, is found to have maintained the proper documents. Question of alleged suppression does not at all arise. We hold that the extended period has wrongly been invoked. The entire period of demand gets hit by the bar of limitation.

13. In the light of entire above discussion, the order under challenge is hereby set aside. Appeal stands allowed.

[Order pronounced in the open court on **<u>03.05.2024</u>**]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

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