CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70343 of 2022

(Arising out of Order-in-Original No.23/Comm/ST/GZB/2021-22 dated 31/03/2022 passed by Commissioner of Central Goods & Services Tax, Ghaziabad)

M/s R.G. Buildwell Engineers Ltd., ...Appellant
(C-30, RDC)

VERSUS

Commissioner of Central Excise &

CGST, Ghaziabad ....Respondent

(CGST, Ghaziabad)

APPEARANCE:

Shri Pravin Sharma, Advocate for the Appellant
Shri Sarweshwar T. Khairnar, Authorised Representative for the Respondent

CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO.70075/2023

DATE OF HEARING : 25 August, 2023
DATE OF DECISION : 25 August, 2023

SANJIV SRIVASTAVA:

This appeal is directed against Order-in-Original No. 23/Comm/ST/GZB/2021-22 dated 31/03/2022 passed by Commissioner of Central Goods & Services Tax, Ghaziabad. By the impugned order Commissioner has held as follows:-

2.1 During the course of verification of third party data received from Income Tax Department for the F.Y. 2014-15, the difference was observed between the values of sale of services declared in their Income Tax Return (ITR data), Values for TDS (TDS data) and total gross value provided in service tax return

(STR data). The details of the said difference in respect of the said party, as received above, are as under:-

(Amount in Rs.)

Financial Year	Total value for TDS (including 194C, 194H, 194I, 194J)	Gross value Service Provided (service tax return)	Value difference in TDS & STR
A	B	C	**D**
2014-15	3024018173/-	6375008/-	3017643165/-

From the afore tabulated data it was apparent that the said party had received an excess amount of Rs.3017643165/- against the taxable service provided by them during the Financial Year 2014-15 but the Service Tax on this amount was not discharged by them as the total value of services provided by the party so depicted in their ST-3 returns had been suppressed by the said amount i.e. the same had not been included by them in their ST-3 returns for computation and payment of service tax.

2.2. To ascertain the service tax liability in view of the provisions of Finance Act, 1994 and Service Tax Rules made there under, the said party was requested to clarify the matter & also requested to submit their ITR'S, 26AS, Balance sheet, Reconciliation statement along with supporting documents for FY. 2014-15 and onwards, by the Superintendent, through email dated 29.10.2020 sent on the registered email address of the party. However, the party failed to furnish the requisite compliance and/or to submit any contention in this regard. R.O. also sent a letter C.No. 20- CGST/R-11/Third Party2014-15/04/20/338 dated 10.11.2020 to the registered address of the said party, through Speed Post. Summons dt. 22.12.2020 were also sent but, no response received from the party.

2.3. In absence of any clarification/information/submissions from the said party, it appeared that the said party is willfully evading submission of the said requisite information/reply and is thereby trying to escape and evade their tax liability.

2.4. During financial year 2014-15 the Service Tax Rates were as under:-

Period	Service Tax Rate	Primary Education Cess	Secondary Education Cess	Swachchha Bharat Cess	Krishi Kalyan Cess
2014-15	12%	2%	1%	0	0

2.5. In view of the above, as no information/document was submitted by the party, the Department was constrained to calculate the service tax liability in respect of the said value consideration, so not accounted for in their ST-3 returns for the purpose of computation and payment of service tax, on the basis of the data furnished by the Income Tax Department, as above, and by computing the tax liability by applying the service tax rate of 12.36% ad valorem for 2014-15. Accordingly, the service tax liability in respect of said value consideration, so not accounted for in their ST-3 returns for the purpose of computation and payment of service tax, during the fiscal year 2014-15 is as hereunder.

Period	Differential Taxable Services so not accounted for in the ST-3 returns	Total Applicable rate of service tax (including cessess)	Total differential amount of Service Tax payable
(Value in Rupees)			
2014-15	3017643165/-	12.36% adv.	372980695/-

2.5 A show cause notice dated 30.12.2020 was issued to the appellant asking them to show cause as to why-

‘’*(i) The Service Tax amounting to 37,29,80,695/- (Incl. Ed. Cess& H. & S. Ed. Cess) (Rupees Thirty Seven Crore Twenty Nine Lac Eighty Thousand Six Hundred & ninety Five only) so deliberately and wilfully short paid by them during the period April, 2014 to March, 2015 should not be demanded and recovered from them, by invoking extended period of limitation, under proviso to Section 73(1) of the Finance Act, 1994.*

(ii) Interest payable against the said demand should not be charged and recovered from them under Section 75 of the Finance Act, 1994.

(iii) Penalty should not be imposed upon them under Section 78 of the Finance Act, 1994.

(iv) Penalty should not be imposed upon them under Section 77(1) of the Finance Act, 1994."

2.6 The show cause notice has been adjudicated as per the impugned order.

2.7 Aggrieved by the impugned order, appellant has filed this appeal.

3.1 We have heard Shri Pravin Sharma, learned advocate appearing for the appellant and Shri Sarweshwar T. Khairnar learned Authorised Representative appearing for the revenue.

3.2 Arguing for the appellant learned Counsel submits that this order has been passed without affording any opportunity to the appellant to submit the reply of show cause notice or without any personnel hearing. The notices were sent by the revenue to the wrong address and the notices were never received to them. Hence, the order clearly violates the principles of natural justice and is bad in law.

3.3 Learned Authorised Representative reiterates the findings of the impugned order.

4.1 We have considered the submissions alongwith the submissions made in the appeal and during the course of argument.

4.2 For confirming the demand of service tax with penalty and interest impugned order records as follows:

"4. <u>CASE FOR THE PARTY :-</u>

The party did not file any reply. A letter DIN 20210754YE000061136A dt. 06.07.2021 was also sent to them for filing the reply but no response received.

5. <u>PERSONAL HEARING:-</u>

The letters for personal hearing for 06.01.2022, 07.02.2022/14.02.2022 and 04.03.2022/11.03.2022 were sent and the same were also emailed on their *email ashokgargrgb@yahoo.com but no one turned up to attend the hearing, therefore, I am constrained to take up the case for adjudication on the basis of available facts on record.*

6. DISCUSSION AND FINDINGS:

***6.1** I have carefully gone through the records of the case of M/s R.G. Buildwell Engineers Ltd., C-35, RDC, Rajnagar, Ghaziabad Uttar Pradesh.*

***6.2** In the impugned show cause notice I find that the service tax demand has been proposed on the differential value between revenue amounts reflected in TDS return (26AS) and gross value declared by the party in the Service Tax returns. The details are as under:-*

Period	Differential Taxable Services so not accounted for in the ST-3 returns	Total Applicable rate of service tax (including cesses)	Total differential amount of Service Tax payable
(Value in Rupees)			
2014-15	3017643165/-	12.36% adv.	372980695/-

***6.3** As per TDS Return, total Sales/ Gross Receipts from services was Rs.3,02,40,18,173/- during Financial Year 2014-15 whereas Gross Value of Service Provided as per ST-3 return during this period was only Rs.637508/-. Thus, there is a difference of Rs.3,01,76,43,165/- in the value of services declared by the party to the Income Tax Department and value declared in their STR.*

***6.4** The party did not submit reply to the notice and did not respond to subsequent letters to appear for personal hearings either. Therefore, I hold that the party has nothing in their favour to submit to the Department against the show cause notice No. 15/Comm/ ST/GZB/ 20-21 dated 30.12.2020 as they never turned up to appear in person or submit any valid sustainable defense in their favour despite been granted ample opportunities of personal hearing by the Department. In these circumstances, there is no other option left but to decide the case ex-parte on the basis of available facts and records as discussed herein above."*

4.3 From the above, it is evident that appellant has never been afforded any opportunity either at the time of investigation or adjudication to explain the discrepancy found in their 26AS statement and the ST-3 return. Accordingly, in our view this order has to be set aside for this reason only and matter remanded back to Original Authority for affording opportunity to the appellant to explain these discrepancies in de-novo proceedings.

5.1 Appeal is allowed. Matter is remanded back to the Original Authority for de-novo re-consideration, after affording an opportunity to the appellant for reconciling the discrepancies pointed in the show cause notice between 26AS return and ST-3 return.

5.2 Since the matter is in respect of demand made for the period 2014-15, the Commissioner in de-novo proceeding will decide the matter within six months from the date of receipt of a copy of this order, following the principles of natural justice.

(Operative part of the order pronounced in open court)

Sd/-
(P.K. CHOUDHARY)
MEMBER (JUDICIAL)

Sd/-
(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

akp