CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>ALLAHABAD</u>

REGIONAL BENCH - COURT No. I

Service Tax Appeal No.51799 of 2014

(Arising out of Order-in-Appeal No.166/NOI/EXCUS/000/APPL/13 dated 19/08/2013 passed by Commissioner (Appeals) Central Excise & Service Tax, Noida)

M/s Multitex Filtration Engineers Ltd., ...Appellant

(A-96, Sector-58, Noida)

VERSUS

Commissioner of Central Excise &

CGST, Noida ....Respondent

(C-56/42, Sector-62, Noida)

<u>APPEARANCE:</u>

Shri Rajesh Chhibber, Advocate for the Appellant
Shri Santosh Kumar, Authorised Representative for the Respondent

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

FINAL ORDER NO.70561/2024

DATE OF HEARING & DECISION : 07 August, 2024

<u>SANJIV SRIVASTAVA:</u>

This appeal is directed against Order-in-Appeal No.166/NOI/EXCUS/000/APPL/13 dated 19/08/2013 passed by Commissioner (Appeals) Central Excise & Service Tax, Noida. By the impugned order Commissioner (Appeals) has upheld the Order-in-Original dated 11/04/2013, wherein Original Authority in his order has held as follows:-

"ORDER

(i) I uphold the demand raised vide Show Cause Notice dt. 15.04.2012 and confirm the demand of Service Tax of Rs. 63945/- under Section 73 of the Finance Act, 1994, which should be recovered from the party, along with interest, as applicable, thereon under Section 75 of the Act, ibid.

(ii) I impose a penalty of Rs. 63945/- upon the party under Section 78 of the act, ibid, which should be deposited forthwith."

2.0 We have heard Shri Rajesh Chhibber learned Counsel appearing for the appellant and Shri Santosh Kumar, learned Authorised Representative appearing for the revenue.

3.1 We have considered the impugned orders along with the submissions made in appeal and during the course of argument.

3.2 We find that the show cause notice issued to the appellant stating as follows:-

"4. Whereas the Superintendent, Service Tax Range-1, Noida vide his letter C. No 20/STR-I/N/Audit/MF/46/10/ dated 10.03.2011 (RUD-1) has asked the party to deposit the Service Tax on said foreign expense Party, vide their letter dated 02.05.2011 (RUD-2) have submitted the details of the services received which are as under-

S.No.	*Financial Year*	*Amount paid against the Services*	*Rate of Services*	*Service Tax (Inclusive of Cess)*
1	*01.04.2007 to 10.05.2007*	*449637*	*12.24%*	*55035/-*
2	*11.05.2007 to 31.03.2008*	*72093*	*12.36%*	*8910/-*
	Total			*63945/-*

5. Whereas the Superintendent, Service Tax Range-l, Noida vide his letter C No 20/STR-I/N/Audit/MF/46/10/ dated 26.07.2011 (RUD-3) has asked the party to deposit the Service Tax on said foreign expense for the period 2008-09 to 2010-11 And the party vide its letter dated 19.08.2011 (Rud-4) has informed that they have deposited the Service tax on import of Services for the period 2009-10 and 2010-11 The party has also informed that there was no outstanding for the period 2008-09 and the party has also informed that they Service tax for the period 2006-07 and 2007-08 will be deposited within a week time but they failed to do so. Later on the party vide its letter *dated 21.09. 11, has informed that the Service Tax for the period 2006-07 has been deposited."*

3.3 Section 73 (3) of the Finance Act, 1994 reads as follows:-

(3) Where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the person chargeable with the service tax, or the person to whom such tax refund has erroneously been made, may pay the amount of such service tax, chargeable or erroneously refunded, on the basis of his own ascertainment thereof, or on the basis of tax ascertained by a Central Excise Officer before service of notice on him under sub-section (1) in respect of such service tax, and inform the Central Excise Officer of such payment in writing, who, on receipt of such information shall not serve any notice under sub-section (1) in respect of the amount so paid:

*Provided that the Central Excise Officer may determine the amount of short payment of service tax or erroneously refunded service tax, if any, which in his opinion has not been paid by such person and, then, the Assistant Commissioner Central Excise or, as the case may be, the Deputy Commissioner of Central Excise shall proceed to recover such amount in the manner specified in this section, and the period of "*thirty months*" referred to in sub-section (1) shall be counted from the date of receipt of such information of payment.*

Explanation 1- For the removal of doubts, it is hereby declared that the interest under section 75 shall be payable on the amount paid by the person under this sub-section and also on the amount of short payment of service tax or erroneously refunded service tax, if any, as may be determined by the Central Excise Officer, but for this sub-section.

Explanation 2.- the removal of doubts, it is hereby declared that no penalty under any of the provisions of this Act or the rules made thereunder shall be imposed in respect of payment of service-tax under this sub-section and interest thereon.

3.4 In terms of the above section on receipt of this information in respect of payment of the service tax due along with the interest the matter should have been closed in respect of the amounts so paid, and show cause notice could not have been issued for such amount.

3.5 In view of the specific provisions in the sub section (3) to Section 73 we are of the view that the entire proceedings initiated by issuance of the show cause notice in the present case are devoid of any merits and are contrary to express provisions in the statute. Hence, we do not find any merits in the show cause notice or the subsequent proceedings leading to impugned order. The order of the Appellate Authority thus cannot be sustained.

7.0 Appeal is allowed.

(Dictated and pronounced in open court)

(P.K. CHOUDHARY)
MEMBER (JUDICIAL)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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