# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
# ALLAHABAD

REGIONAL BENCH - COURT NO.I

**Service Tax Appeal No.70216 of 2022**

(Arising out of Order-in-Appeal No. 216-ST-APPL-LKO-2019, dated - 23.04.2019 passed by Commissioner (Appeals) Customs, GST & Central Excise, Lucknow)

**M/s Sea TV Network Ltd.** **.....Appellant**
(148, Manas Nagar, Shahganj
Agra, Uttar Pradesh 282010)

*VERSUS*

**Commissioner, CGST & Central Excise, Agra**
**....Respondent**
(Agra)

**APPEARANCE:**
Shri Nishant Mishra, Advocate for the Appellant
Ms. Chitra Srivastava, Authorized Representative for the Respondent

**CORAM: HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)**

**FINAL ORDER NO.-70841/2024**

DATE OF HEARING : 06.12.2024
DATE OF DECISION : 06.12.2024

**ANIL G. SHAKKARWAR:**

Brief facts of the case are that the Appellant is engaged in providing taxable services and Appellant was issued with a Show Cause Notice dated 16.08.2018 for denial of cenvat credit upto September 2014 which included period from April 2014 to September 2014. As per the submissions of the learned counsel for the Appellant show cause notice culminated into Appellant filing declaration under Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 and have received discharge certificate subsequently. On 18.10.2019 Appellant was issued with a show cause notice demanding Rs.8,03,514/- for the year 2014-15 which also included period from April 2014 to September, 2014. The basis for issuance of show cause notice dated 18.10.2019 was the difference in the value shown in income tax return and the value of services provided shown in the ST-3 Return.

2. Heard learned counsel for the Appellant. Learned counsel for the Appellant has submitted that for part of the period for which present show cause notice was issued, the proceedings were initiated against the Appellant and to that extent present show cause notice is repetition of proceedings for the same period which is not permissible in law. He further submitted that the Revenue has not established that the difference between income tax paid value and service tax paid value was on account of providing any services since the onus is on Revenue to make out a *prima facie* case. He has relied on Final Order of the Tribunal in the case of **Kush Constructions V/s CGST NACIN, ZTI, Kanpur reported at 2019 (24) G.S.T.L. 606 (Tri.-All.)** and submitted that this Tribunal has held that it is not legal to presume that the entire differential amount was consideration for providing services. He further argued that for the same reason proceedings are not sustainable in law.

3. Heard the learned Departmental Representative who has submitted that the Appellant has not given any reasons for the difference between the two.

4. I have carefully gone through the record of the case and submissions. It is time and again decided by this Tribunal that Revenue cannot raise demand on the basis of difference between the value on which income tax is paid and the value on which service tax is paid without examining the reasons for the said difference and without establishing that the entire amount received by the Appellant as reflected in income tax return is consideration for providing services and without examining whether the difference was because of any exemption,

abatement or reverse charge mechanism. It is not legal to presume that the entire difference was on account of consideration for providing services. I find that the Final Order of this Tribunal as relied upon by the learned counsel for the Appellant is squarely applicable in this case. It is pertinent to once again mention that the onus is on Revenue to make out a *prima faci* case for leveling charges in a show cause notice. I, therefore, find that the impugned Show Cause Notice dated 18.10.2019 is not sustainable and therefore, all proceedings arising out of the same also are not sustainable. I, therefore, set aside the impugned order and allow the appeal.

(Dictated and pronounced in open court)

**Sd/**
**(ANIL G. SHAKKARWAR)**
**MEMBER (TECHNICAL)**

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