IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No: ST/2417/2012-CU[DB]

(Arising out of Order-in-Appeal No. 139/ST/APPL/Noida/2012 dated 18/05/2012 passed by Commissioner of Central Excise, Service Tax & Customs (Appeals), Noida)

Ms Solutions Appellant
Vs.
Commissioner of Central Excise & Service Tax, Noida
Respondent

Appearance:
Shri V. V. Gautam (Advocate)
for Appellant
Shri Gyanendra Tripathi, AC (AR)
for Respondent

CORAM:
Hon'ble Mr. Anil Choudhary, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 28/08/2017
Date of Decision : 28/08/2017

FINAL ORDER NO. – 70575/2018

Per: Anil Choudhary

The issue in this appeal is whether the appellant is liable to pay Service Tax on the amounts received from the service receiver as claimed by them by way of reimbursement of expenses incurred, as pure agent.

2. Show cause notice dated 22nd October, 2010, was issued alleging that the appellant have collected various amounts from the service receiver during the period June ,2005 to April, 2008 being TA, DA, Mobile expenses, Med claim policy, ESI, Lunch, Inconvenience charges, Other charges, Bus fare etc. But such amounts were found not included in the taxable value and no Service Tax paid on the same. However, on some of the receipts of similar nature after collecting from the customers, it appeared the appellant have paid service tax. It appeared to Department that the appellant was liable to pay service tax on such payments received by way of reimbursement and further they have suppressed the facts from the Department. As such extended period of limitation was invocable.

3. Heard the parties.

4. We find that in the Order-in-Original. The Additional Commissioner mentioned that the appellant have filed the defence reply on 28th February, 2011. Whereas on going through the said letter placed in the appeal paper book at Page 61, we find that it is only an application, wherein the appellant have expressed the difficulty in replying to the show cause notice immediately and sought three weeks time to submit defence reply. Under such circumstances, we find that the Order-in-Original was passed ex parte. Further, we find that the appellant was prevented by sufficient cause for not filing the reply to the show cause notice. We further find that the Order-in-Original is also silent as to

the opportunities provided for hearing, to the appellant. We further find that from the show cause notice, in Para-2, it is mentioned that during the course of scrutiny of records by the audit, Revenue came to know about certain reimbursable expenses on which service tax was not paid. Accordingly, we find that there is no case of suppression of facts made out by the Department as they have recorded the transaction in the books of accounts maintained in the ordinary course of business.

5. Accordingly, we hold that extended period of limitation is not applicable. Secondly, so far the demand for the normal period is concerned. We allow the appeal by way of remand to the Adjudicating Authority with directions to re-adjudicate the show cause notice. After considering the reply to show cause notice, if any, and the evidences led or to be lead by the appellant. The appellant is also directed to appear before the adjudicating authority with reply to the show cause notice along with evidences, they want to rely upon, within a period of 60 days from receipt of a copy of this order and seek an opportunity of hearing.

6. Registry to send order to the new address of the appellant, as intimated today in writing/also Dasti.

(Dictated & Pronounced in Court)

Sd/- Sd/-

(Anil G. Shakkarwar)
Member (Technical) (Anil Choudhary)
Member (Judicial)Lks
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