CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL ALLAHABAD

REGIONAL BENCH - COURT No. I

Service Tax Appeal No.71061 of 2018-Single Member

(Arising out of Order-in-Appeal No. GZB/SVTAX/000/APPL-MRT/69/2018-19 dated 14/05/2018 passed by Commissioner of Central Goods & Service Tax, (Appeals), Meerut)

M/s United Cement Agency **.....Appellant**

(C-2/26, First Floor Ashiana Arcade,

Indirapuram, Ghaziabad-201010)

VERSUS

Commissioner of Central GST, Ghaziabad **....Respondent**

(Div. V, Ghaziabad)

APPEARANCE:

Absent on Call for the Appellant
Shri Rajeev Ranjan, Authorised Representative for the Respondent

CORAM:

HON'BLE SMT. ARCHANA WADHWA, MEMBER (JUDICIAL)

FINAL ORDER NO. 71015 / 2019

Date of Hearing : 11 March, 2019
Date of Decision : 22 May, 2019

PER: ARCHANA WADHWA

On matter being called neither anybody appeared nor is there any adjournment request, in spite of notice having been sent well in advance. Accordingly, we have heard learned A.R. appearing for the Revenue and have gone through the impugned orders.

2. The appellant is registered with the Service Tax Department falling under the category of 'Clearing & Forwarding Agents Services'. Their premises were visited by the officers on

15/09/2014, who conducted various checks and verifications. It was found that the appellant was providing services of sales promotion to cement companies by way of arranging orders for them and facilitating payment to such companies. The said activity was not being discharged to service tax by the assessee.

3. In view of the foregoing, proceedings were initiated against them by way of issuance of a show cause notice dated 30/06/2015 raising demand of service tax of Rs.10,10,028/- for the period 2012-13 to 2014-15. The same was confirmed by the Original Adjudicating Authority alongwith confirmation of interest and imposition of penalty of identical amount under Section 78 of the Finance Act. In addition penalty of Rs.60,000/- was imposed under Section 70 of the Act read with Rule 7C of the Cenvat Credit Rules. On appeal the said order of the Original Adjudicating Authority was upheld by Commissioner (Appeals) and hence the present appeal.

4. It is seen that the appellant had not disputed the fact of providing of services and have simplicitor submitted that the show cause notice issued to them is vague inasmuch as the category of services provided by them has not been specified. However, I find that the period involved is subsequent to 2012 and the Appellate Authority has observed as under:-

> *"6.1.1 From the above excerpts of the statements it is evident that the appellant was providing services to various cement companies in connection with the procurement of orders for the cement companies and facilitation of payments. The appellant received considerations for said services provided to the cement companies on which the service tax has been demanded. This fact is further corroborated by the reply of Shri Jitender Soni, Proprietor of the appellant, to the question No.7 of his statement dated 15/09/2014 wherein he has stated that he could not pay service tax due to financial crisis. It is therefore evident that the appellant knew fully*

well that the services provided by him to the cement companies were liable to service tax. Despite this the appellant neither paid the service tax nor filed the returns. I do not find any cogent explanation or reason for not paying the service tax. The appellant has not mentioned any bona fide reasons or grounds for not paying the service tax and not complying with the provisions of the Act despite having taken the registration under the provisions of the Act. Under the facts and circumstances of the case, as discussed above, the intent to evade service tax is established and the demand has rightly been made by invoking proviso to Sub-section (1) of Section 73 of the Act. The contention of the appellant that the department visited his premises on 15/09/2014 and they had all the information cannot be taken as a valid ground, under the facts and circumstances of the case, for contesting the demand made by invoking proviso to sub-section (1) of Section 73 of the Act. Under the circumstances, and in view of the provisions of Section 73 (4) of the Act, the provisions of Section 73 (3) are not applicable in the case of the appellant, as claimed by him. The demand of service tax alongwith the interest is therefore sustainable. Consequently, penalty of equal amount imposed under Section 78 of the Act is also upheld."

5. As it is not the appellant's case that the services provided by them were excluded from the areena of service tax or the same were exempted under any particular Notification, I find no merits in their case. However, it is seen that the demand stands confirmed by invoking longer period limitation. As the negative list era was introduced in 2012 itself there could be a *bona fide* belief on the part of the appellant to entertain a belief that the services provided by them are not taxable. In the absence of any evidence to the contrary indicating any *mala fide* on the part of the appellant, I am of the view that longer period of limitation is not available to the Revenue. Accordingly, I set aside the

demand on the issue of time bar. As a part of the demand may fall within the limitation period, the Original Adjudicating Authority is directed to re-quantify the same to whom matter is being remanded.

6. As regards penalty, as I already held absence of *mala fide* on the part of the appellant the imposition of penalty upon them is not justified. The same is accordingly set aside.

7. The appeal is disposed of in above terms.

(Order pronounced in the open court on – 22 May, 2019)

Sd/-
(Archana Wadhwa)
Member (Judicial)

Lks