CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL ALLAHABAD

REGIONAL BENCH - COURT No. I

Service Tax Appeal No.71132 of 2016-Division Bench

(Arising out of Order-in-Original No.01/COMMISSIONER/ST/NOIDA/2016-17 dated 28/07/2016 passed by Commissioner of Service Tax, Noida)

M/s Meroform (India) Pvt. Ltd. .....Appellant

(A-37, Sector-80, Noida, U.P.)

VERSUS

Commissioner of Service Tax, Noida ....Respondent

(Renu Tower, C-56/42, Sector-62, Noida, U.P.)

APPEARANCE:

Shri S.K. Mathur, Advocate for the Appellant
Shri Rajeev Ranjan, Authorised Representative for the Respondent

CORAM:

HON'BLE SMT. ARCHANA WADHWA, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO. - 71380 / 2019

Date of Hearing : 10 July, 2019
Date of Decision : 10 July, 2019

PER: ANIL G. SHAKKARWAR

After hearing both the sides duly represented by Shri S.K. Mathur learned advocate on behalf of the appellant and Shri Rajeev Ranjan learned A.R. on behalf of the Revenue, we note that the appellants were providing various services to Delhi Development Authority. Appellants were duly registered with Service Tax Department under the category of 'Business Exhibition Service', 'Erection, Commissioning & Installation

Service' and 'Works Contract Service'. They provided services to Delhi Development Authority and the same were utilized for preparation of Commonwealth Games. It was noticed by Revenue that the appellants were not paying due service tax for the period from April, 2010 to November, 2010 and therefore a show cause notice was issued to the appellants on 25/07/2014 wherein it was stated that for the period from April, 2010 to November, 2010 around Rs.2.61 crores service tax was payable by the appellant whereas they paid only around Rs.76 lakhs through Cenvat account and did not pay service tax to the tune of Rs.1.85 crores. The said service was paid by the appellant during the period from 07/01/2011 to 15/06/2011 alongwith interest. The total interest paid was around Rs.12 lakhs. It was also stated in the said show cause notice that ST-3 returns for the period from April, 2010 to September, 2010 and October, 2010 to March, 2011 were filed on 20/01/2012 after initiation of enquiry. Through said show cause notice a demand of Rs.1.85 crores of service tax for the period from 01/04/2010 to 30/11/2010 was raised by invoking proviso to Sub-section (1) of Section 73 of Finance Act, 1994 with proposal to appropriate service tax paid and interest paid and with proposal to impose penalties. The said show cause notice was adjudicated through impugned Order-in-Original wherein the demand was confirmed and service tax already paid was appropriated. The interest already paid was also appropriated. The appellants were imposed with penalty of Rs.1,85,41,395/- under Section 78 of

Finance Act, 1994 and another penalty of Rs.3,000/- under Section 77 of Finance Act, 1994.

2. Learned counsel for the appellant has argued that since the service tax alongwith interest was paid before issuance of show cause notice the penalties imposed deserved to be set aside in terms of provisions of Sub-section (3) of Section 73 of Finance Act, 1994.

3. Learned A.R. appearing for the Revenue has supported the impugned Order-in-Original.

4. Having considered the submission from both the sides and on perusal of records, we note that under Sub-section (4) of Section 73 of Finance Act, 1994 it is provided that the provisions under Sub-section (3) to said Section 73 are not applicable where non-payment of service tax is on account of suppression of facts. We note that the appellant had not filed ST-3 returns for the impugned period till 20/01/2012 nor paid service tax of Rs.1.85 crores and the said short payment was detected through an enquiry by Revenue. Therefore, we hold that Sub-section 3 of Section 73 of Finance Act, 1994 which empowers conclusion of proceedings of payment of service tax alongwith interest before issuance of show cause notice are not applicable in the present case. The case laws relied upon by the learned counsel for the appellant reported at 2009-TIOL-161-CESTAT-MAD is not applicable in the present case because in the said case service tax was paid voluntarily alongwith interest whereas in the

present case service tax was paid after initiation of enquiry. Further the ruling of Hon'ble Karnataka High Court in the case of Commissioner of Service Tax, Bangalore vs. Prasad Bidappa reported at 2011 (09)LCX0148 relied upon by learned counsel for the appellant is not applicable in the present case because in the said case suppression was not alleged. Further relied upon another Final Order of this Tribunal reported at 2008-TIOL-2286-CESTAT-BANG is also not applicable in the present case since there is no reference to Sub-section (4) which has debarred Sub-section (3) of Section 73 in case there is suppression. In view of the above findings, we do not find any infirmity with the impugned order and therefore, we do not interfere with the impugned order.

5. The appeal is rejected.

(Dictated and pronounced in open court)

Sd/-
(Archana Wadhwa)
Member (Judicial)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

Lks