CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT No. I

Service Tax Appeal No.70407 of 2019-[DB]

(Arising out of Order-in-Original No.104/2018-ST dated 31/12/2018 passed by Additional Director General (Adjudication), Directorate General of GST Intelligence, New Delhi)

M/s Super Shine Services Pvt. Ltd. .....Appellant

(G-9 Ground Floor, Sector 41, Noida-201301)

VERSUS

Additional Directorate General GST

Intelligence(Adjudication Cell), New Delhi ...Respondent

(New Delhi)

WITH

Service Tax Appeal No.70408 of 2019

(Arising out of Order-in-Original No.104/2018-ST dated 31/12/2018 passed by Additional Director General (Adjudication), Directorate General of GST Intelligence, New Delhi)

Mr. Sandeep Chaudhary, Director .....Appellant

(M/s SuperShine Services Pvt. Ltd.)

VERSUS

Additional Directorate General GST

Intelligence (Adjudication Cell), New Delhi ...Respondent

(New Delhi)

AND

Service Tax Appeal No.70409 of 2019

(Arising out of Order-in-Original No.104/2018-ST dated 31/12/2018 passed by Additional Director General (Adjudication), Directorate General of GST Intelligence, New Delhi)

Mr. Raj Mohan Dabas, Director .....Appellant

(M/s SuperShine Services Pvt. Ltd.)

VERSUS

Additional Directorate General GST

Intelligence (Adjudication Cell), New Delhi ...Respondent

(New Delhi)

<u>APPEARANCE:</u>

Shri Abhinav Kalra, Chartered Accountant for the Appellants
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 NOS-70243-70245/2020

DATE OF HEARING : 05 February, 2020
DATE OF PRONOUNCEMENT: 28 July, 2020

PER: ANIL G. SHAKKARWAR

The above stated three appeals are taken together for decision since they arise out of common impugned Order-in-Original dated 31.12.2018.

2. The brief facts of the case are that the main appellant were providing various services & were registered with Service Tax Department since 22.09.2008. The main appellant opted for VCES Scheme and declared their unpaid service tax liability of Rs.63,88,125/- up to 31.12.2012, paid the same and received immunity from any proceedings for the period upto 31.12.2012. The appellants were issued with show cause notice dated 05.06.2017 for the period from 01.01.2013 to 30.09.2015 raising demand of Service Tax under proviso to Sub-section (1) of Section 73 of Finance Act, 1994 by invoking extended period of limitation. The ground raised for invoking the said proviso was that the appellant had not filed ST-3 returns till the issue of show cause notice. Through the same show cause notice there

was proposal for imposition of penalties on the other two appellants. The appellants submitted before the Original Authority that Rules made under Finance Act, 1994 provide for payment of late fee for late filing of ST-3 returns and therefore, late filing of ST-3 returns cannot be ground for invoking extended period of limitation. They also submitted before the Original Authority that they had issued invoices to all their customers and all the transactions are recorded in their books of account. As such, there was no suppression of any facts nor there was any fraudulent intention. The learned Original Authority accepted the plea of the appellants that the details of transactions were recorded by the appellant in their specified records and therefore he had held that the appellants were entitled for reduced penalty under proviso to Section 78(1) of Finance Act, 1994. However, the Original Authority confirmed the demand of Service Tax andappropriated an amount of Rs.4,79,89,170/- (Rs. Four Crore Seventy Nine Lakh Eighty Nine Thousand One Hundred Seventy only) voluntarily deposited by the appellant. The Original Authority also imposed personal penalties under Section 78 A ibid on the two appellants. Hence the above stated three appeals.

3. We have heard Shri Abhinav Kalra learned Chartered Accountant on behalf of all the three appellants. He has made following submissions:-

a) Section 73 (3) of Finance Act, 1994 provided that if there are no ingredients for invocation of extended period of limitation for raising a demand in respect of Service Tax then in respect of

Service Tax paid before issue of show cause notice there is no provision for issue of show cause notice.

b) The learned Original Authority has accepted that the main appellant had voluntarily deposited Rs.4,79,89,170/- before issue of show cause notice.

c) The learned Original Authority has accepted that the details of transactions were recorded by the appellants in specified records and therefore the appellant was entitled for reduced penalty.

d) The period of show cause notice is from 01.01.2013 to 30.09.2015. During the relevant time normal period of limitation was eighteen months.

e) The ground for invoking extended period as stated in the show cause notice is that the appellant has not filed ST-3 returns. However, as per said Rule 7 C of Service Tax Rules, 1994, law has provided payment of late fee for delay in filing ST-3 returns. Admittedly amount of Rs.6,81,38,990/- were paid before issue of show cause notice and all transactions were recorded in specified records. Therefore, there were no ingredients for extending normal period of limitation for raising the demand.

f) The normal period of limitation was from 01.02.2015 to 30.09.2015. The Service Tax liability for the period from 01.02.2015 to 30.09.2015 was Rs.1,81,20,700/- (Rs One Crore Eighty One Lakh Twenty Thousand Seven Hundred only). The Service Tax deposited before issue of show cause notice was much more than the said amount. Hence, under Section 73 (3) of Finance Act, 1994 the said show cause notice dated 05.06.2017 could not have been issued.

g) Since the authority did not have authority of law to issue said show cause notice dated 05.06.2017, the impugned Order-in-Original is not sustainable.

h) Since the impugned Order-in-Original is not sustainable, all the three appeals may be allowed.

4. Heard Shri Rajeev Ranjan, learned Authorized Representative on behalf of Revenue. He has reiterated the findings of Original Authority.

5. We have carefully gone through the case records and submissions made by both the sides. We note that the learned Original Authority has accepted the plea of the appellant that the details of the transactions were recorded by the appellant in their specified records. Further, he was held that the appellants were entitled to reduced penalty. This indicates that there were no elements for invoking extended period of limitation. Further, in view of submissions of the learned Chartered Accountant on behalf of the appellant that the amount voluntarily deposited was more than service tax liability for normal period, there were no provisions for issue of said show cause notice dated 05.06.2017 in view of provisions of Sub-section (3) of Section 73 of Finance Act, 1994. Therefore, we hold that subjected show cause notice dated 05.06.2017 was not sustainable. As a result, we hold that the impugned Order-in-Original is not sustainable.

6. Therefore, we set aside the impugned Order-in-Original and allow all the three appeals. All the three appellants shall be entitled for consequential relief as per law.

(Pronounced on-28 July, 2020)

Sd/-
(Archana Wadhwa)
Member (Judicial)

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

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