CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I (SM)

Service Tax Appeal No. 60611 of 2023

[Arising out of Order-in-Appeal No. CHD-EXCUS-001-APP-33-2023-24 dated 02.08.2023 passed by the Commissioner (Appeals), CGST, Chandigarh]

Manoj Kumar **......Appellant**
2425/9, Gunnu Ghat,
Nahan, Sirmaur,
Himachal Pradesh 173001

VERSUS

Commissioner of Central Goods & Service Tax, Shimla **......Respondent**
Commercial Parking Complex, Ground & First Floor,
Chhota Shimla, Himachal Pradesh 171002

APPEARANCE:

Sh. Joy Kumar, Advocate for the Appellant

Sh. Harish Kapoor with Sh. Narinder Singh, Authorized Representatives for the Respondent

CORAM:

HON'BLE Mr. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 60503/2024

DATE OF HEARING: 28.08.2024
DATE OF DECISION: 28.08.2024

PER: P. ANJANI KUMAR

The present appeal is directed against the impugned order dated 02.08.2023 passed by the learned Commissioner (Appeals).

2. Briefly stated facts of the case are that the appellant Sh. Manoj Kumar is a provider of Outdoor Catering Service to various canteens. On the basis of the third party information i.e. statements in the

Form of 26AS/ITR provided by the Income Tax Department, the Revenue issued a show cause notice dated 06.09.2018 to the appellant seeking recovery of the service tax of Rs.20,07,967/- along with interest and penalties for the period 2012-13 to 2017-18. The learned Adjudicating Authority vide Order-in-Original dated 23.02.2022 confirmed the demand of service tax under proviso to Section 73(1) of the Finance Act, 1994 along with interest under Section 75 *ibid* and imposing the penalty of Rs.10,000/- under Section 77 *ibid* and equivalent penalty under Section 78 *ibid*. On an appeal filed by the appellant, the learned Commissioner (Appeals) vide impugned order dated 02.08.2023 partially allowed the appeal by confirming the demand of service tax of Rs.2,27,771/- for the year 2012-13, while dropping the demand in respect of subsequent period for the reason that there was no income for the said service earned by the appellant during that period.

3. Sh. Joy Kumar, learned Counsel for the appellant submits that the period involved is 2012-13 and 2017-18 whereas the show cause notice was issued on 06.09.2018; the show cause notice has been issued on the third party data and therefore, extended period is not invokable. He also submits that in terms of Rule (2C) of the Service Tax (Determination of Value) Rules, 2006, 60% abatement is to be allowed in respect of Outdoor Catering Service. He submits that the appellant has not rendered any other service and therefore, rebate @60% should not be denied to the appellant. He further submits that the demand, even if the extended period is held to be invoked, the same should sustain only for the period 01.10.2012 to 31.03.2013

and the service tax payable during that period after abating the abatement is Rs.42,013/-. Further, learned Counsel fairly submits that the appellant is ready to discharge their liability to that extent. He relies on decision of Hon'ble Apex Court in the case of *Hindustan Steel Ltd vs. The State of Orissa – AIR 1970 (SC)*.

4. Sh. Harish Kapoor, learned Authorized Representative for the Revenue opposes and submits that extended period is invokable as the appellant did not submit any proof of rendering only one service i.e. Outdoor Catering Service and did not obtain registration and not filed ST-3 returns, extended period is invokable and suitable penalties are also liable to be imposed.

5. Heard both the sides and perused the records of the case.

6. The show cause notice dated 06.09.2018 seeks to cover the period 2012-13 onwards as submitted by the learned Counsel for the appellant; the period before 01.10.2012 is clearly beyond even the extended period; for this reason, the demand confirmed cannot be sustained and confirmation of demand, if any, has to be for the period 01.10.2012 to 31.03.2013 only. In addition, learned Counsel for the appellant submits that as the appellant has rendered only one service, abatement @60% in terms of Rule (2C) of the Service Tax (Determination of Value) Rules, 2006 should be allowed to them. The argument of learned AR that the appellant has not obtained registration and not filed returns should not come in the way of the benefit i.e. legally due to the appellant.

7. On going through the facts and circumstances of the case, this Bench finds that there are no reasons to disbelieve the learned Counsel for the appellant. This Bench appreciates the fairness of the learned Counsel in accepting the liability even when extended period cannot be invoked. This Bench finds its appropriate to confirm the duty for the period 01.10.2012 to 31.03.2013 along with interest. This Bench is of the considered opinion that no penalty is imposable on the appellant.

8. The appeal is partially allowed by confirming the demand of Rs.42,013/- for the period 01.10.2012 to 31.03.2013 along with interest.

(Dictated and pronounced in the open court)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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