CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I (SM)

Service Tax Appeal No. 60216 of 2023

[Arising out of Order-in-Appeal No. CHD-EXCUS-001-APP-167-2022-23 dated 05.01.2023 passed by the Commissioner (Appeals), CGST, Chandigarh]

Ms. Dolly Bhatia **......Appellant**
House No. 201, Sector 38-A,
Chandigarh 160036

VERSUS

Commissioner of Central Excise and Central Goods & Service Tax, Chandigarh **......Respondent**
Plot No. 19, C R Building,
Sector 17C, Chandigarh 160017

APPEARANCE:

Shri Ajay Jain, Adocate for the Appellant

Shri Raman Mittal, Authorized Representative for the Respondent

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)

FINAL ORDER NO. 60623/2024

DATE OF HEARING: 28.11.2024
DATE OF DECISION: 28.11.2024

The present appeal is directed against the impugned order dated 05.01.2023 passed by the Commissioner (Appeals), CGST, Chandigarh, whereby the learned Commissioner (Appeals) has allowed the appeal of the department by setting aside the Order-in-Original.

2. Briefly stated facts of the present case are that the appellant is engaged in providing Information & Technology services to the service receivers located outside India. The present proceedings against the appellant were initiated on the basis of gross receipts as shown in Income Tax Returns and Form 26-AS for the year 2014-15 vide Show Cause Notice dated 29.09.2020 which was allegedly not received by the appellant rather the appellant received the notice for virtual hearing and received the same through their authorized representative on 18.02.2022 only. After following the due process and considering the submissions and documents including the FIRC and other details, the Original Authority accepted that the activity undertaken by the appellant is covered as 'export of service' and dropped the proceedings in *toto*; and passed the adjudication order holding that the activity of the appellant was covered as 'export of service'. The Revenue reviewed the adjudication order and thereafter filed the appeal before the Commissioner (Appeals) and the appellant also filed the Cross Objections; thereafter, the Commissioner (Appeals) after hearing both the parties allowed the appeal of the Revenue and set aside the adjudication order; hence the present appeal.

3. Heard both the parties and perused the material on record.

4.1 The learned Counsel appearing on behalf of the appellant submits that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts and law.

4.2 He further submits that the findings in the impugned order are non-speaking and beyond the scope of issue as the Commissioner (Appeals) has confirmed the demand by deviating the basis issue as to whether the receipts pertain to export of services or not.

4.3 He further submits that the findings of the Commissioner (Appeals) for non-production of evidence of receipt of payments such as bank account is totally contrary to the facts especially when the Original Authority dropped the proceedings after examining the facts of realization of exports proceeds by way of FIRC which is clear from adjudication order.

4.4 He further submits that the Commissioner (Appeals) has confirmed the demand by referring irrelevant discrepancies which was not the issue for determination especially when the Original Authority accepted the receipts to be export proceeds on the basis of FIRC which is a legal document for acceptance of the proof of export of services.

4.5 He further submits that the Commissioner (Appeals) has confirmed the demand by invoking the extended period of limitation. He also submits that entire demand in the present case is barred by limitation because the Show Cause Notice was issued after the expiry of normal period of limitation i.e. on 29.09.2020 which was otherwise served on 18.02.2022 whereas the period of demand is October 2014 to March 2015.

4.6 He further submits that the Commissioner (Appeals) has not given any findings on limitation and has simply held that the submissions on the issue are devoid of merit.

4.7 He further submits that the suppression cannot be alleged against the appellant when an activity has been shown in the requisite records including the bank account and Income Tax Returns on the basis of which the Show Cause Notice was issued.

4.8 In support of his submission on the issue of limitation, he relies on the following decisions:

- **Gannon Dunkerley & Co. Ltd. Versus Commissioner (Adj.) Of S.T., New Delhi - 2021 (47) G.S.T.L. 35 (Tri. - Del.)**
- **Tally Solutions Pvt. Ltd. Versus Commissioner Of C. Ex., Bangalore - 2020 (41) G.S.T.L. 520 (Tri. - Bang.)**
- **Mega Trends Advertising Ltd. Versus Commr. Of C. Ex. & S.T., Lucknow - 2020 (38) G.S.T.L. 57 (Tri. - All.)**
- **Principal Commr. Of Gst & C. Ex., Chennai Versus C. Kamalakannan - 2018 (18) G.S.T.L. 589 (Mad.)**
- **Commissioner Of Central Tax Versus Zee Media Corporation Ltd. - 2018 (18) G.S.T.L. 32 (All.)**
- **C.S.T., New Delhi Versus Kamal Lalwani - 2017 (49) S.T.R. 552 (Tri. - Del.)**

5. On the other hand, the learned Authorized Representative for the Revenue reiterates the findings of the impugned order.

6.1 After considering the submissions made by both the parties and perusal of the material on record, I find that the Original Authority accepted the activity undertaken by the appellant as 'export of service' and dropped the proceedings by considering all the evidences on record.

6.2 Further, I find that on appeal filed by the Revenue, the learned Commissioner (Appeals) without considering the reasons on the basis of which the Original Authority has dropped the proceedings, proceeded to confirm the demand on the basis of irrelevant discrepancies which was not the issue for determination especially when the Original Authority has accepted the receipts to be export proceeds on the basis of FIRC which is a legal document for acceptance of proof of export of service.

6.3 Further, I find that the entire proceedings against the appellant were initiated on the basis of gross receipts as shown in the Income Tax Returns and Form 26-AS for the year 2014-15.

6.4 I also find that the entire demand in the present case is barred by limitation because the Show Cause Notice was issued on 29.09.2020 but the same was served on 18.02.2022 whereas the period of demand is October 2014 to March 2015; and the learned Commissioner (Appeals) has not given any finding on the limitation.

6.5 Further, I find that the extended period of limitation can only be invoked when the department establishes by cogent evidence that there is a suppression of material facts at the appellant's end with intent to evade payment of duty, whereas in the present case there is no suppression because the Show Cause Notice is based upon the documents including bank account and Income Tax Returns.

7. In view of my discussion above, I am of the considered opinion that the impugned order is not sustainable in law, therefore, I set aside the same by allowing the appeal of the appellant.

(Operative part of the order pronounced in the open court)

(S. S. GARG)
MEMBER (JUDICIAL)

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