

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH**

Service Tax Appeal No.60185 of 2021

(Arising out of Order-in-Appeal No. APPL/PKL/COMMR/58/2020-21 dated 24/12/2020 passed by the Commissioner of CGST, Panchkula (Appeals)).

M/s. Raj Mohan.

HNO. 293, Old Hamida,
Krishna Colony, Yamuna Nagar- 135001.

.....Appellant

VERSUS

Commissioner of CGST, Panchkula.

Plot No. 5, GST Building,
Sector-25, Panchkula.

.....Respondent

APPEARANCE:

Shri B.R. Sharma, Advocate for the Appellant
Ms. Geetika, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO. 60074/2022

Date of Hearing: 02.05.2022

Date of Decision: 08.08.2022

PER: AJAY SHARMA

This appeal has been filed impugning the Order-in-Appeal No. APPL/PKL/COMMR/58/2020-21 dated 24/12/2020 passed by the Commissioner of CGST, Panchkula (Appeals) by which learned Commissioner rejected the appeal filed by the appellant and upheld order of the Adjudicating Authority.

2. The appellants are providing taxable services under the category 'manpower supply'. The audit of the appellant was conducted for the period 2013-14 to 2016-17 and for the said period the audit found differences in the figures reflected in ST-3 returns and form 26AS filed under Income Tax Act, 1961 and it

was noticed that the appellant received excess income in 26AS as comparison to income shown in ST-3 returns. The Service Tax applicable for the said differences come to Rs. 3,74,121/-. It was also found that Service Tax of Rs. 38,357/- had not been paid on the 4 invoices raised by the appellant to *M/s. ISGEC, Yamuna Nagar*. Accordingly, a show cause notice dated 17/10/2018 after invoking the extended of limitation was issued demanding Service Tax amount of Rs. 4,12,478/- (Rs. 3,71,121/- + Rs. 38,357/-) alongwith applicable interest and penalty for the said short payment of Service Tax. The aforesaid demand was confirmed by the Adjudicating Authority vide Order-in-Original dated 04/09/2020 alongwith interest and penalty. On appeal filed by the appellant the learned Commissioner (Appeals) vide impugned order dated 24/12/2020 upheld the confirmation of demand alongwith interest and penalty and rejected the appeal filed by the appellants.

3. I have heard learned Counsel for the appellant and learned Authorised Representative for the Revenue and perused the case records including the written submissions and case laws filed by the respective sides. Learned Counsel for the appellant submits that on merits as well as on limitation no Service Tax can be demanded from the appellant. Per Contra, learned Authorised Representative re-iterated the submissions recorder in the impugned order and prays for dismissal of appeal filed by the appellant. So far as the issue about differences in the figures reflected in ST-3 Returns and in form 26AS is concerned it has been settled by way of various decisions of the Tribunal that the Revenue cannot raise the demand on the basis of merely differences without establishing that the entire amount received by the appellant as reflected in form 26AS is consideration for services provided because it is also not proper to presume that the entire differential amount was on account of consideration for providing services without verifying it. It is the specific case of the appellant that the amount shown in Form 26AS by the service recipient have not been received by the appellant. I also agree with the submission of learned Counsel that the burden to

prove the allegations is upon the department that the appellants have received the extra payment on which the TDS of Rs.3,74,121/-(since form 26AS reflects TDS) has been deducted by the service recipient. My aforesaid view is also supported by the decision of the Tribunal in the matter of *Qwest Engineering Consultant Pvt. Ltd. v/s Commissioner CGST, Central Ex. Allahabad; 2022 (58) GSTL-345 (Tri-All.)* in which the co-ordinate Bench of the Tribunal has held that form 26AS is not a statutory document for determining the taxable turnover under the Service Tax as form 26AS is maintained on cash/receipt basis by the Income Tax department for the purpose of TDS etc. whereas the Service Tax is chargeable on mercantile basis (approval basis) on the services provided. Similarly, in the matter of *Kush Construction v/s CGST Nachin, ZTI, Kanpur; 2019 (24) GSTL-606 (Tri-All.)* also it has been held that differences in figures reflected in ST-3 Returns and form 26AS cannot be basis for raising Service Tax demand without examining the reasons for such differences and without examining whether the amount as reflected in the said Income Tax Return was the consideration for providing any taxable services or the difference was due to any exemption or any abatement. Even otherwise in various decisions of the Tribunal it has been held that the figures in form 26AS are already included in Income Tax Returns in the Profit & Loss account and balance sheet which is a public document and the ST-3 Returns were also filed by the appellants regularly therefore, no suppression can be alleged and no evidence has been adduced by the Revenue to establish melafide intention for evasion of Service Tax and therefore extended period cannot be invoked. The recent decision of the Tribunal on this issue of extended period in such type of cases is by the Kolkata Bench of the Tribunal vide order dated 23/02/2022 in the matter of Service Tax Appeal No. 75792 of 2021 titled as *M/s. Luit Developers Pvt. Ltd. v/s. Commissioner CGST & Central Excise, Dibrugarh*. So far as the demand of Rs. 38,357/- based on four invoices is concerned, I am unable to find any document in the case records in support of appellant. The appellant has failed to

adduce any evidence/document in support of their claim that the said amount has not been received by them or that the invoices/bills were cancelled. Rather it has been submitted by the learned Counsel that the appellant has made a submission before the lower authorities that they were ready to pay the service tax amount involved on the said invoices in order to avoid the interest liability and in the written submission herein it has been mentioned by the appellant that the service tax has been deposited by them. Therefore accordingly this issue is decided against the appellant.

4. In view of the discussion made hereinabove the appeal of the appellant is partly allowed.

(Pronounced in open Court on 08.08.2022)

(Ajay Sharma)
Member (Judicial)

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