

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
CHENNAI**

Appeal No.ST/314/2011

[Arising out of Order-in-Original No.06/2011 dt. 23.02.2011 passed by
Commissioner of Central Excise, Chennai-IV]

Citadel Videos

Appellant

Versus

Commissioner of Central Excise,
Chennai-IV

Respondent

Appearance :

Shri N.K. Bharath Kumar, Consultant
For the Appellant

Shri K. Veerabhadra Reddy, ADC (AR)
For the Respondent

CORAM :

Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)
Hon'ble Shri P. Dinesha, Member (Judicial)

Date of hearing / decision : 14.11.2018

FINAL ORDER No. 42885 / 2018

Per Shri Madhu Mohan Damodhar

Appellants are a proprietary concern engaged in providing Video Tape Production and Programme Production Service for Television channels. Pursuant to an audit by the departmental officers, it appeared that the proprietor of appellant is running programme production units in three more names in the same premises. It appeared from scrutiny of some invoices that appellant had

been charging over and above service charges from 2003 onwards. It also appeared from the taxable value declared in the ST-3 returns that appellants had suppressed actual receipts of amounts considerably. Accordingly, show cause notice dt. 22.10.2009 was issued to the appellants inter alia proposing demand of service tax of Rs.80,12,625/- in respect of Video Tape Production / Programme Production Service and Rs.3,24,147/- in respect of renting of Immovable property service along with interest and imposition of penalties under Section 76 & 78 of the Finance Act, 1994. In adjudication, vide impugned order dt. 23.02.2011 the proposals for demand of tax were confirmed with interest and imposed equal penalty under Section 78 ibid. However, the adjudicating authority refrained from imposing penalty under Section 76 ibid. Hence this appeal.

2. Today when the matter came up for hearing, on behalf of the appellant, Ld. Consultant Shri N.K. Bharath Kumar made oral and written submissions which can be summarized as under :

- i) For the years 2003-04 to 2005-06, the appellants prepared details only in the format of receipts and payments and income and expenditure account. Only after receipt of letter from the Income Tax department, they have started preparing Profit & Loss Account along with Balance Sheets.
- ii) During 2004-05 to 2007-08, most of the receipts have been accounted as single line item instead of splitting the values towards video tape production and vehicle hire charges. Hence it will be unjust to tax the vehicle hire charges without any proposal in the SCN in that regard.
- iii) The entire value of receipts as available in the financials were adopted for the purposes of SCN without any change.

iv) Ld. Consultant drew our attention to para 2.4 of the SCN which confirms that one of the service recipients viz. M/s.Raj Television had inter alia certified that for the period upto 2005-06, the appellant has not charged them any service tax.

v) Since the amounts available in the financials are including service tax value, the higher demand has been raised in the SCN and confirmed. Accordingly, the Ld. Consultant submitted a chart based upon the data now available with them whereby the total service tax liability in respect of video tape production and vehicle hire charges, would be Rs.23,38,874.71 against Rs.80,12,625/- confirmed in the impugned order. Similarly, in respect of renting of immovable property, the demand is worked out only to Rs.3,05,822.11 instead of Rs.3,24,147/- demanded in the impugned order. Ld. Consultant clarifies that the revised liability, according to them, has been based on the actual receipts and payments and have also taken into account cum duty benefit.

vi) Ld. consultant prays that the matter may therefore be remanded to enable the appellants to produce proof concerning actual receipts and payments and also produce proof that they have not collected service tax in most of the cases. He submits that in cases where they have not collected service tax, cum duty benefit may be granted in those cases.

vii) A prayer is also being made that in respect of penalty that may be finally arrived, the benefit of reduced penalty as provided in proviso to clause (ii) of sub-section (1) of Section 78 may be granted to them upon re-determination of tax liability.

3. On the other hand, Ld. A.R. Shri K. Veerabhadra Reddy reiterates the impugned order. He also submits that appellants have been put to notice and that they had sufficient opportunity during the adjudication proceedings to produce the records which they have not done, hence at this stage, matter should not be remanded and the impugned order may be upheld.

4. Heard both sides and have gone through the facts.

5.1 From the perusal of para 5.3.1 of the impugned order, it is evident that the appellants had made a submission before the authority that in most of the bills they had failed to collect service tax, however the actual data as to how much amount was collected as service tax is not made available. The adjudicating authority has also made an observation that actual quantification of the service tax collected and taxable value on which no service tax was collected, are not available on records.

5.2 Viewed in this context, we hold that the appellant should be given one more opportunity to produce all the relevant documents in support of the claim made before this Bench that their actual receipts and payments are in fact much lower than the tax liability worked upon in consequence. So ordered. In such de novo adjudication, the adjudicating authority is directed to grant cum duty benefit in respect of those amounts where service tax has not been collected from the service recipients. There is no interference made in respect of imposability of penalty under Section 78 *ibid*, however, needless to say the penalty will be commensurate to the revised tax liability that may emerge after the de novo proceedings. The adjudicating authority should also extend the benefit of reduced penalty subject to the condition that appellants to fulfil the condition as

per proviso to clause (ii) of sub-section (1) of Section 78 *ibid.* With these directions, the matter is remanded for de novo proceedings to the adjudicating authority.

(dictated and pronounced in court)

(P. Dinesha)
Member (Judicial)

(Madhu Mohan Damodhar)
Member (Technical)

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