CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL CHENNAI

REGIONAL BENCH – COURT NO. III

Service Tax Application No.ST/CO/25/2012
(on behalf of respondent)
in
Service Tax Appeal No. 81 of 2012
(Arising out of Order-in-Appeal No.190/2011(M-ST) dt. 25.10.2011 passed by Commissioner of Central Excise (Appeals), Chennai]

Commissioner of Service tax **Appellant**
Service Tax Commissionerate,
Nandanam,Chennai-35

VERSUS

Buysell Interactions P. Ltd. **Respondent**
No.5, Shanmugam Ltd.
Royapettah
Chennai 600 014.

APPEARANCE :

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

Shri Lohit Vasa, Advocate
For the Respondent

CORAM :

HON'BLE MR. MADHU MOHAN DAMODHAR, MEMBER(TECHNICAL)
HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

DATE OF HEARING : 05.04.2019
DATE OF DECISION : 05.04.2019

FINAL ORDER No. 40675 / 2019

PER MADHU MOHAN DAMODHAR

The present appeal is filed by Revenue against the Order-in-Appeal No.190/2011 dt. 25.10.2011 (impugned order) passed by the Commissioner (Appeals) setting aside the order of original authority.

2. The facts of the case are that M/s.Nuysell Interactions (P) Ltd., Chennai, the respondents herein were providing services of Event Management, Business Exhibition and Sale of Space for advertisement Services. The respondent's unit charges the customers "Service charges/Stall charges, Advertisement Charges" for the services provided by them relating to organizing of an event of business exhibition, selling of space on the coupons or the advertisement banners displayed in such events or exhibitions. They have opted to discharge the liability towards services to the Government after the receipt of the payments by their clients. Upon scrutiny of audit of the respondent (assessee), it was noticed that there was difference in the taxable value shown in ST3 returns and the Profit and Loss Account for the period 2003-04 to 2007-08 leading to short payment of service tax. Department took the view that short payment was due to non-payment of service tax on Stall charges, events conducted abroad claiming export of services and media charges. Hence a show cause notice dt. 16.10.2010 was issued to the respondent proposing demand of an amount of Rs.39,04,099/- with interest and also proposing imposition of penalties under various provisions of law. Upon adjudication, the original authority vide an order dt. 15.04.2010 confirmed the demand as proposed in the notice and imposed equal penalty under Section 78 of the Finance Act, 1944. He also imposed penalty of Rs.5000 under Section 77 ibid. On appeal, the Commissioner (Appeals) partly set aside the order of original authority. Aggrieved, the Revenue has filed this appeal.

2.1 Today when the matter came up for hearing, on behalf of the Revenue, Ld. A.R Shri K. Veerabhadra Reddy supports findings in the order of the original authority.

2.2 He submits that the short payment of tax arose due to the difference between the P&L Account and ST-3 returns. The following are the details of tax payable, tax paid and the short payments made by the assessee :

Year	Service Tax payable (Rs.)	Remitted Amount (Rs.)	Short payment (Rs.)
2003-04	5,87,212	40,592	5,46,620
2004-05	9,46,454	-	9,46,454
2005-06	10,58,552	5,23,048	5,35,504
2006-07	13,65,207	8,22,323	5,42,884
2007-08	17,49,304	4,16,667	13,32,637
Total Non-Payment			**39,04,099**

2.3 The assessee had not paid service tax on stall charges. These are charges for setting up space / stalls for participation in exhibitions etc. The assessee unit charges the customers "Service charges/ Stall charges, Advertisement Charges' for the services provided by them relating to organizing of an event or business exhibition, selling of space on the coupons or the advertisement banners displayed in such events or exhibitions. Respondents have opted to discharge the liability towards service tax to the Government after the receipt of the payments by their clients.

2.4 Service tax was not paid on certain amount under the category of 'export of services' as claimed by them. There was no documentary evidence produced as proof of such export of services. It is not known whether all the conditions of export of services were fulfilled.

2.5 They had not paid service tax on media charges on the ground that sale of space in registered print media is exempted from service tax, however no documentary evidence has been produced by them that such services were rendered for registered print media.

2.6 Respondents have contravened Rule 9 (6) of CCR 2004 in as much as they have not maintained proper records for the receipt and consumption of input services. They have not furnished the relevant information regarding the value, tax paid, cenvat credit taken and utilized, the person from who the input service has been produced, resulting in short payment of service tax when compared to P&L Account with ST-3 returns.

2.7 The short payment of tax came to light only upon the visit of Internal Audit Group to the premises of the assessee. They had failed to disclose the above activities to the Department either in their ST-3 return or otherwise, hence invocation of longer period is rightly invocable in this case. He prays for setting aside the impugned order and restoring the order of original authority by allowing the appeal of Revenue.

3. On behalf of the respondent, Ld. Advocate Lohit Vasa, supports the order of Commissioner (Appeals). He has also filed cross objections inter alia contending that the Revenue's appeal is not maintainable as it

has been prepared without the meeting of the Committee; that there is no proper authorization by the Committee for filing the appeal before Tribunal; that the order and signature of Commissioners bears no date. It is also submitted in the cross-objections [in para 6 (iv)] that the Commissioner (Appeals) order is legal and proper.

4.1 Heard both sides. The issue to be decided in the instant case is whether the demand is hit by limitation as claimed by the respondent and whether they are liable to pay service tax on stall charges, events conducted abroad claiming export of services and media charges during the disputed period.

4.2. The contention of the Revenue in the appeal filed by department is that the demand is not hit by time bar and the assessee is liable to pay service tax on the stall charges collected and charges collected for conducting events at Srilanka and liable for penalty imposed under Section 77 and 78 of the Finance Act, 1994.

4.3 From the facts on record, it is very much evident that the allegations of short payment of service tax was brought up against the respondents after audit and verification of Profit and Loss Account and Trial Balance. The difference between the taxable value shown in the ST-3 returns filed for the period 2003-04 to 2007-08 and the P&L account was alleged to be suppressed and non declared value and hence the tax liability of Rs.39,04,099/- was proposed thereon and, which was confirmed by the adjudicating authority with interest thereon. We find that even before the adjudication stage, the respondent has been contending that no tax is required to be paid both on stall charges and export services. In the first appeal, the Commissioner (Appeals) vide his order dt. 25.10.2011 took note of the following contentions of the respondent :

(i) that assessee had given details regarding their activities in their ST-3 forms filed periodically. It is stated that longer period of limitation is not invokable when the assessee has been regularly filing ST-3 returns. Hence, the demand raised by department for the period 2003 to October 2007 is barred by limitation.

ii) that Business Exhibition Service was brought under tax net only w.e.f. 10.09.2004. The services rendered by the assessee cannot be classified under both "Event Management Service" and "Business Exhibition Service" simultaneously by the department.

(iii) that having permitted amendment of the registration certificate to incorporate the Business Exhibition Services at a later date, the department had in fact conceded that the service rendered by the assesses falls only under Business Exhibition Service.

(iv) that demand has been made without properly classifying the services rendered and therefore demand made without classification is not sustainable.

(v) that in the ST-3 forms filed periodically, the assessee had given details regarding export of services and had also furnished letter from High Commission in Colombo, NOC issued by Indian Trade Promotion Organization and copy of invoices from the venue of Exhibition.

(vi) that according to Section 65(105) (zzzm) of the Finance Act 1994, services provided in relation to sale of space for advertisement in print media are exempted from payment of service tax. Hence the services provided by assessee under the category of sale of space or time for Advertisement services are outside the purview of levy of service tax.

4.4 The Commissioner (Appeals) in the impugned order has found in para 5.1 that the only the ground on which the proviso to extend the period of time was invoked is that assessee had not disclosed disputed activities in ST-3 forms or in any other manner to the department. However, the assessee had submitted copy of letter dt. 23.09.2004 addressed to the jurisdictional Deputy Commissioner, duly acknowledged by the jurisdictional Superintendent whereby they had informed the activities to the department. Based on this fact, and also taking into account the fact that assessee had filed ST-3 returns, the Commissioner (Appeals) concluded that there is no suppression of facts in the present case with intention to evade payment of service tax and proviso to extended period of limitation cannot be involved in the present case and based on these findings, the Commissioner (Appeals) has held that the major part of the demand period is time barred and the period of demand for period from 17.10.2007 will only survive.

4.5 In respect of media charges, the Commissioner (Appeals) has found that the services rendered by assessee to the registered newsletter during the disputed period is exempted from service tax as per provisions of law in Section 65(105) (zzzm) ibid.

4.6 We are not able to find any infirmity in these findings. It is not the allegation that assessee had not filed ST-3 returns. There are no justifiable reasons or grounds to allege suppression or fraud etc. with intention to evade payment of tax on the part of the assessee. Even as early as 23.09.2004, assessee had submitted a letter addressed to the department wherein they had informed the scope of nature of their activities. We are therefore of the considered opinion that the Commissioner (Appeals) is correct in ordering that the extended period of limitation cannot be invoked in this case and that the SCN will only be valid for the normal period of limitation.

4.7 Regarding media charges also, we find that the Commissioner (Appeals) has correctly concluded that services rendered by the assessee under Section 65(105) (zzzm) ibid, namely services provided in relation to sale of space for advertisement in print media are exempted from paying service tax as per provisions of law during disputed period.

4.8 We further find that in the ST-3 returns filed to the department during the relevant year, the assessee had given details regarding export of services. They had further produced copies of invoices / letters from the High Commission of India, Colombo, copy of NOC issued by Indian Trade Promotion Organization for conducting 'Image Today' exhibition in Colombo and copy of VAT invoice dated 03.10.2007 issued by the Director of the venue where the exhibition was conducted in Colombo. In these circumstances, the Commissioner (Appeals) is correct in concluding that assessee is not liable to pay service tax on the services rendered for conducting events in Sri Lanka, as they are export of services, hence exempt from levy of service tax.

5. We therefore do not find any grounds or reasons to modify order or set aside the impugned order. No merit is then found in the appeal filed by Revenue, for which reason it is dismissed. As the appeal itself is disposed of, the cross objections filed by respondent also get disposed.

(operative part of the order pronounced in court)

(Madhu Mohan Damodhar
Member (Technical)

(P. Dinesha)
Member (Judicial)

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