IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

REGIONAL BENCH - COURT NO. – III

Service Tax Appeal No. 40231 of 2019

(Arising out of Order-in-Appeal No.5/2018 (STA-II) (UN) (CS) dated 23.01.2018 passed by the Commissioner of GST & Central Excise (Appeals) Puducherry)

M/s. Benchmark Eventss, **Appellant**
No.147/3, Peters Road,
Thousands Lights,
Chennai 600 086.

Vs.

Commissioner of GST & CE **Respondent**
Chennai Outer Commissionerate,
Newry Towers No.2054-I, II Avenue,
Anna Nagar
Chennai 600 040.

APPEARANCE:

Ms. Chithrra, Proprietrix for the Appellant
Shri R. Raja Raman, AC (AR) for the Respondent

CORAM :

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)

FINAL ORDER NO. 42292 / 2021

Date of Hearing: 02.09.2021
Date of Decision: 02.09.2021

The brief facts of the case are that during the course of verification of the accounts of the appellant, it appeared that they have provided services under the category of 'Event management Services' but have not discharged the service tax on such services even though service tax was collected by them from the customers. Show cause notice was issued for the period 10.12.2008 to 20.08.2011 proposing to demand service tax along with interest and for imposing penalties. After due process of law, the original authority confirmed the demand which has been raised by invoking the extended period, interest thereon and imposed penalty under Section 78 (1) of the Finance Act,1994 with an option to pay reduced penalty @ 25% of the total demand confirmed, if the adjudged dues are paid within 30 days from the date of receipt of the order. A penalty of Rs.10,000/- under Section 77 (1) of Finance Act,1994 was also imposed on the ground that appellant contravened provisions of Section 69 read with Rule 7 of Service Tax Rules, 1994 as they failed to register themselves with the department under appropriate service. So also, they have not filed ST-3 returns during the material time. Against such order, the appellant preferred appeal before the Commissioner (Appeals) who upheld the Order-in-Original and dismissed the appeal filed by the appellant. Hence this appeal.

2. The appellant was represented by its proprietrix Ms. Chithrra. It was argued by her that appellant had taken registration in 2007 and that the allegation that the appellant has not registered is factually incorrect. The service tax was not paid as they were facing financial problems and the money collected was put in the business of the appellant. At the time of adjudication proceedings, the appellant could not produce relevant documents so as to claim the benefit of input tax credit. The documents for the period 2010-2011 are now

available with them and if the matter is remanded, she would be able to submit the same before the adjudicating authority. She prayed for a further chance to claim benefit of input tax credit.

3. Ld. A.R Shri R. Raja Raman supported the findings in the impugned order. It was pointed out by Ld. A.R that appellant had registered for 'Man Power Recruitment Agency Supply Service'. The present show cause notice is in regard to service tax liability under the Event Management Service. They had not taken registration for such services. Further, in spite of several chances given, the appellant, did not produce necessary documents to claim input tax credit, if any. He submitted that the impugned order does not require any interference.

4. Heard both sides.

5. The liability to pay service tax on Event Management Service is not disputed by the appellant. So also, it is admitted by her that they have collected service tax from the customers. The appellant has not deposited the service tax collected by them to the Central Government which is against law. In para 20 of the OIO, it is noted that from verification of invoices, bank statements, it is revealed that the appellant has not included all the considerations collected from the client in the taxable value for the purposes of payment of service tax. On such score, I do not find any grounds to interfere with the liability to discharge service for the impugned period.

6. The appellant has put forward the contention that they were not able to produce necessary documents at the time of adjudication so as to claim the input tax credit. It is submitted by her that they now have the documents for the year 2010-11. Taking note of this request, I am of the view that the matter can be remanded for the limited purpose of looking into the claim of the appellant with regard to input tax credit for the period 2010-2011. In para 8 of the OIA, it is discussed that as per the proviso to Section 28 (1) of the Finance Act, 1994, only 50% of the service tax involved can be imposed as penalty if the details of the transactions are available from the records. The said proviso was introduced on 08.04.2011. The Commissioner (Appeals) did not extend this benefit on the ground that documents were not produced. If the appellant furnishes the document with regard to this period, the benefit of less penalty under the said proviso can be considered by the adjudicating authority.

7. From the foregoing, I uphold the demand for the period upto 2009-2010. The demand confirmed for the period after 1.4.2010 till 20.08.2011 is remanded to the adjudicating authority who shall re-determine the liability after taking into consideration the claim of the appellant with regard to input tax credit. So also, the benefit of imposing lesser penalty as per proviso to Section 28 (1) of Finance Act, 1994 can be extended to the appellant, if eligible.

8. The appeal is partly remanded to the adjudicating authority and partly disposed of in the above terms.

(Operative part of the order was pronounced
in open court on 02.09.2021)

(**SULEKHA BEEVI C.S.**)
Member (Judicial)

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