CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.
PRINCIPAL BENCH - COURT NO. II

Service Tax Appeal No.53510 of 2018 - SM

[Arising out of Order-in-Appeal No.BHO-EXCUS-002-APP-265-18-19 dated 23.07.2018 passed by the Commissioner (Appeals), Central Goods & Service Tax & Central Excise & Customs, Raipur (C.G.)]

M/s.Maa Sharda Associates **Appellant**
Brahmanpara, Near Hans Book Depot,
Raipur (C.G.)

VERSUS

Commissioner of Central Goods & Service Tax & Central Excise & Customs, **Respondent**
Raipur, AT- Central Excise Building,
Tikrapara, Dhamtari Road,
Raipur, Chhattisgarh.

APPEARANCE:

Shri J.M. Sharma, Advocate and Ms. Pooja Agarwal, Chartered Accountant for the appellant.
Ms. Tamnna Alam, Authorised Representative for the respondent.

CORAM: HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO.51554/2019

DATE OF HEARING: 26.06.2019
DATE OF DECISION: 26.06.2019

ANIL CHOUDHARY:

Heard the parties.

2. The issue involved in this appeal is whether the show cause notice is validly issued under the facts that pursuant to the Audit objection, the appellant had deposited the tax along with interest, before issue of show cause notice.

3. The admitted facts are that when the Audit took place during 2011-2012 to 2016-2017, sometime in November-December, 2016. Earlier,

service tax was payable on receipt basis, w.e.f. June, 2011, changed from receipt basis to billing basis. Thus, the assessee were liable to pay service tax on the basis of the bills raised or receipt of the consideration, whichever was earlier. Further, the admitted fact is that the appellant was depositing service tax regularly during the period in question, on receipt basis. The only adjudication of the Audit was that they should have paid on billing basis and accordingly, the differential tax was worked out at Rs.13,42,387/-, which was soon thereafter deposited along with interest vide a separate challan dated 19.01.2017. This fact is recorded in the show cause notice.

4. Considering the facts and circumstances, I find that the show cause notice is bad under the provisions of Section 73 (3) of the Finance Act, 1994, which provides, "where an assessee deposits the tax with interest, on being so pointed out by the Revenue Authority, under intimation, in such case, no show cause notice needs to be issued". I further find that there is no case of fraud and contumacious conduct on the part of the appellant. In this view of the matter, show cause notice is held to be not maintainable. Accordingly, the appeal is allowed and the impugned order is set aside. The appellant is entitled to consequential benefit.

[Order dictated and pronounced in open court]

(Anil Choudhary)
Member (Judicial)

Ckp.