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

Service Tax Appeal No.50966 of 2019 (SM)

[Arising out of Order-in-Appeal No.110 (AG)/CE/JDR/2018 dated 16.02.2018/22.02.2018 passed by the Commissioner (Audit), Central Goods and Service Tax, Jodhpur (Rajasthan)]

Head Post Office **Appellant**
New Colony,
Dungarpur,
Rajasthan.

VERSUS

Commissioner of Central Excise and **Respondent**
Central Goods and Service Tax,
142-B, Sector-11, Hiran Magri,
Udaipur (Rajasthan).

APPEARANCE:

None for the appellant
Ms. Tamnna Alam, Authorised Representative for the respondent.

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

FINAL ORDER NO.51139/2021

DATE OF HEARING/DECISION:11.03.2021

ANIL CHOUDHARY:

The appellant is absent on call. Heard the ld. Authorised Representative for the respondent/Revenue and perused the appeal records.

2. The appellant is Post Master at Post Office, Dungarpur. Evidently, the appellant was paying service tax in respect of its taxable services including courier services by way of book adjustment or 'e-lekha'. With effect from 1.10.2014, there was an amendment vide notification no.9/2014-ST dated 11.07.2014, wherein the substituted Rule 6(B) to Service Tax Rules 1994 was substituted and reads as under:-

> `**"Every assessee shall electronically pay the service tax payable by him, through internet banking"**

3. Accordingly, pursuant to show cause under the admitted fact the appellant has already deposited the service tax through e-lekha but not deposited the service tax electronically as required under Rule 6(B), the duty with respect to the service tax Rs.2,78,341/- for the year 2014-2015 was confirmed along with interest and further penalty was imposed under Rules 70, 76 and 77 of the Finance Act, 1994 and also late fine of Rs.40,000/- (Rs.20,000/- x 2) for the half yearly ST-3 returns was imposed under Section 70 read with Rule 7(C) of Service Tax Rules.

4. Being aggrieved, the appellant preferred appeal before the Commissioner (Appeals), who was pleased to record the finding that the appellant has already paid service tax through e-lekha portal and it is sufficient compliance of the law. Payment through e-lekha portal cannot be said to be a payment not made electronically. It was further noticed that as the appellant was having temporary registration without PAN, they could not get the user id and password for filing returns on the net portal. Further, in spite of pursuance with the Service Tax Department, the Pan number could not be taken because Post Office was a Central Government Department under the Department of Post & Telegraph. The appellant was issued online user Id and password on their temporary registration number and the pass word was activated in the year 2013-2014 and thereafter, they were able to file their returns. Further, the appellant had made sufficient compliance as service tax was already paid in time. Accordingly, the Commissioner (Appeals) was pleased to set aside the demand of service tax with interest as well as penalty under Sections 76 and 77 of the Act. He was also pleased to uphold the penalty under Section 70 read with Rule 7 (c).

5. Having gone through the grounds of appeal and considering the contentions of the ld. Authorised Departmental Representative, I find that the third proviso under Rule 7(C) of Service Tax Rules 1994 provides that,

"where the gross amount of service tax payable is nil, the central excise officer may, on being satisfied that there is sufficient reason for not filing the returns, reduce or waive the penalty."

6. Under the facts and circumstances, in view of the facts recorded by the Commissioner (Appeals), I find that there is genuine reasons for not filing or late filing of the service tax returns. Further, admittedly, the appellant had paid the service tax and thus, there was no intention to evade payment of service tax. In this view of the matter, penalty under Section 70 is set aside. Thus, the appeal is allowed and the impugned order is modified accordingly.

[order dictated & pronounced in open court]

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Ckp.