CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Service Tax Appeal No. 50962 of 2020 [SM]

[Arising out of Order-in-Appeal No.210 (SM)/ST/JPR/2020 dated 15.05.2020 passed by the Commissioner (Appeals), Central Excise & CGST, Jaipur]

M/s. Mahatma Gandhi University of Medical Sciences and Technology, …**Appellant**
RIICO Industrial Area, Tonk Road,
Jaipur (Rajasthan)

VERSUS

Commissioner
Central Excise & Central Goods and Service Tax, Jaipur. …**Respondent**

APPEARANCE:

Mr. Tej Narayan Saini, Chartered Accountant for the Appellant
Mr. Ravi Kapoor, Authorized Representative for the Respondent

Coram: HON'BLE MRS. RACHNA GUPTA, MEMBER (JUDICIAL)

DATE OF HEARING: **20.07.2021**
PRONOUNCED ON : **08.09.2021**

FINAL ORDER No. 51802/2021

RACHNA GUPTA

The Order-in-Appeal No.210 (SM)/ST/JPR/2020 dated 15.05.2020 has been assailed vide the impugned appeal. The facts in brief giving rise to the present appeal are as follows:

2. That the appellants are registered under the category of legal consultancy service, work contract service, manpower

recruitment/ supply agency service, maintenance or repair service and security/ detective agency service. During the scrutiny of ST-3 Returns of the appellant by AG (Audit), the Department noticed that the appellant had received services of manpower recruitment or supply agency during the period of April, 2015 to March, 2016 and had paid Service Tax under manpower recruitment or supply agency service on 75% of gross service value under reverse charge mechanism as per the provisions of Notification No.30/2012-ST dated 20th June, 2012. It was observed that the appellant was otherwise liable to pay Service Tax on 100% of gross service value in terms of the aforesaid Notification being amended vide Notification No.07/2015-ST dated 01.03.2015 with effect from 01.04.2015. With these observations, Department alleged a short payment of Service Tax of Rs.71,440/- from the appellant and hence proposed the recovery thereof vide Show Cause Notice No. 1611 dated 10.04.2018 alongwith the interest and the penalty. The said proposal was initially confirmed vide the Order-in-Original No.03/2019 dated 08.03.2019. However, for an amount of Rs.63,072/- alongwith the applicable interest and the penalty has been confirmed. The appeal thereof has been rejected. Still being aggrieved, appellant is before this Tribunal.

3. I have heard Mr. Tej Narayan Saini, learned Counsel for the appellant and Mr. Ravi Kapoor, Authorized Representative for the Department.

4. It is mentioned on behalf of appellant that there is no dispute about the fact that the appellant was liable to pay Service

Tax on 75% of gross service value of the services received under reverse charge mechanism vide Notification No.30 of 20th June, 2012 and vide the amended Notification of 1st March, 2015, it was to be paid on 100% of gross service value. It is submitted that the period in dispute is immediately after the said amended Notification i.e. w.e.f. April 2015 to March, 2016 and the amendment has also to take effect from 01.04.2015. In the given circumstances, the intentional evasion may not be alleged against the appellant. The authorities below are alleged to have wrongly held suppression of facts on part of the appellant. It is submitted that otherwise also the Service Tax on balance 25% amount of service value stands already paid by the service provider. Hence present is not at all a case of short payment of Service Tax. The demand has wrongly been confirmed. The provisions imposing penalty have wrongly been invoked. Order is accordingly liable to be set aside. In addition, it is submitted that appellant is an education Institute as contrary to a business entity and the Mega Exemption Notification No.25/2012-ST dated 20th June, 2012 exempts the appellant from the liability. With these submissions, the order under challenge is prayed to be set aside and the appeal is prayed to be allowed.

5. While rebutting these submissions, it is mentioned by learned D.R. that all these arguments have duly been considered by Commissioner (Appeals). It is submitted that appellant in-fact had failed to produce any evidence to support the said submissions as has been observed by Commissioner (Appeals) in

para 7.4 of the Order under challenge. There is no infirmity or illegality in those findings. Appeal is, accordingly, prayed to be dismissed.

6. After hearing both the parties and perusing the record, it is observed and held as follows:-

Appellant has admitted his liability of paying Service Tax for receiving manpower recruitment and supply agency service to the extent of 75% on the gross value of service received under reverse charge mechanism. There is no dispute about the discharge of the liability to the said extend by the appellant. There is also no dispute that this liability was in terms of the Notification No.30/2012 dated 20.06.2012 which stands amended vide Notification No.7/2015 –ST dated 01.03.2015 requiring such service recipient to pay tax on 100% value of service received. There is also no dispute about the fact that the period in dispute is exactly from the date of coming into affect of said amendment i.e. 01.04.2015 till the end of the said Financial Year i.e. March, 2016 unawareness of the appellant to such a sudden change to be implemented in so proximity of time of its coming into effect cannot be ruled out. Consequently, I am of the opinion that non-payment by the appellant for the said period is merely due to his bonafide belief of his liability to the extent of paying the service tax at 75% of the service value. Once there is no apparent malafide on part of the appellant and in view of the aforesaid bonafide belief of the appellant, fastening the allegations as that of concealment fraud and suppression are held to be highly unjustified.

7. Hon'ble Supreme Court in the case of **Pushpam Pharmaceuticals Co. Vs. Collector of Central Excise, Bombay reported in 1995 (78) ELT 401 (S.C.**) has held that word and phrase as that of "suppression of facts" as used in proviso to section 11A (1) of Central Excise Act, 1944 are to be interpreted strictly because of its use with the strong words like fraud collusion or willful default. It has been held that mere omission to disclose a correct information is not a suppression of fact unless it was deliberate to escape from paymen5t of duty. The Hon'ble Apex Court in another decision n the case of **Continental Foundation Jt. Venture vs. CCE, Chandigarh reported in 2007 (216) ELT 177 (SC)** has held that when the Revenue invokes the extended period of limitation under Section 11A, the burden is cast upon it to prove the suppression of fact as far as fraud and collusion are concerned, it is evident that intent to evade duty is built into these very words so far as misstatement or suppression or facts are concerned, they are clearly qualified by the word "willful" preceding the words "mis-statement or suppression of facts" which means with intent to evade duty. The next set of words "contravention of any of the provisions of this Act or Rules" are again qualified by the immediately following words" with intent to evade payment of duty". Therefore, there cannot be suppression or misstatement of fact which is not willful.

8. In the present case, the above observations are sufficient for me to hold that the alleged non-payment cannot be called as willful or intentional act of the appellant to evade the payment of duty. Otherwise also, there is no denial on part of the Department that the balance service tax on 25% value of the service has already been paid by the service provider. The Department, thus, has received 100% tax amount on the impugned transaction. Confirming such liability again under the pretext of the amendment of the applicable Notification will be nothing but will amount to receiving tax twice for the same transaction. Without going into the other merits of the status of appellant as to whether it is a business entity or a body Corporate or a charitable trust, the above discussion makes it clear that the appellants liabilities stands already discharged. The demand should not have been confirmed. Commissioner (Appeals) in para 7.4 has acknowledged that the Journal Vouchers, cash memo bill, salary details of housekeeping having reference of the amount of Rs.63,072/- against service tax were very much available. The demand confirmed in the present case is of said Rs.63,072/- only. The findings of Commissioner (Appeals) that there is no documentary evidence to prove the payment of service tax twice in support of appellants contention is therefore, not at all sustainable. Accordingly, the findings are liable to set aside. Above all, the Department was not entitled to invoke the extended period of limitation for no willful suppression on part of appellant that too with intent to not to pay duty (full duty already stands paid). Show Cause Notice of the year 2018 alleging recovery for

the period 2015-16 is definitely beyond the normal period of one year. The Show Cause Notice is therefore held being barred by time. The demand for the normal period is also not sustainable in view of above discussion.

9. In view of entire above findings, the order under challenge is hereby ordered to be set aside. Appeal consequently stands allowed.

[Order pronounced in the open Court on **08.09.2021**]

(RACHNA GUPTA)
MEMBER (JUDICIAL)

Anita