

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.**

PRINCIPAL BENCH - COURT NO. II

Service Tax Appeal No. 50864 of 2020-SM

(Arising out of order-in-appeal No. 370(CRM/ST/JPR/2019 dated 07.10.2019/17.10.2019 passed by the Commissioner (Appeals), Customs & Central Goods, Service Tax, Jaipur).

M/s Rajcomp Info Services Limited
Yojna Bhawan, 1st Floor, Tilak Marg, C-Scheme
Jaipur (Rajasthan).

Appellant

VERSUS

**Commissioner, Central Goods and
Service Tax,**
NCR Building, C-Scheme
Jaipur – 302005.

Respondent

APPEARANCE:

Sh. Hemant Bajaj & Sh. Kunal Agarwal, Advocates for the appellant
Sh. Mahesh Bhardwaj, Authorised Representative for the respondent

CORAM:

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

FINAL ORDER NO. 50322/2022

DATE OF HEARING/DECISION: 04.04.2022

ANIL CHOUDHARY:

The appellant – assessee, M/s RajComp Info Services Limited is a Government company incorporated at the instance of Government of Rajasthan, wherein all the shares in the company are held by the Governor of the State. Further, the objects of the said Company are to provide expertise including IT consultancy, in the field of e-Governance, project conceptualisation and implementation, capacity building in the IT area, provision of customized IT solutions spanning hardware as well as software projects, GIS development and

multimedia development. The said company works as a wing of the Government and the Principal Secretary, IT&C, Government of Rajasthan, is the Chairman of the company. Thus, the said company is the State designated agency for implementation of projects under National e-Governance Plan, etc.

2. The appellant is registered with the Service Tax Department and maintains proper records and have been filing their periodical return, which fact is not disputed.

3. Show cause notice dated 28.03.2018 was issued, pursuant to AG audit raising demand for the period April, 2012 to March, 2015, as it appeared to Revenue that the appellant have not deposited service tax under 'reverse charge mechanism' on the basis of input services being hiring of motor vehicle, supply of manpower services and legal services. It is also alleged that during the period April, 2016 to March, 2017, the appellant received commission of Rs.85,10,228/- on which although service tax was paid, but there appears to be delay ranging from 53 to 329 days, thus the interest for delayed payment of service tax of Rs.1,49,752/-, is not disputed and it is submitted by the Counsel that the said amount has already been paid.

4. Another issue raised by the Id. Counsel regarding irregular availment of cenvat credit of Rs.42,467/-. Ld. Counsel for the appellant further states that, it is being of clerical mistake in nature, and this amount has already been paid. However, the appellant are not contesting the said amount.

5. The next allegation is regarding excess availment of cenvat credit of Rs. 3,27,503/-. It is alleged in the show cause notice that the appellant has closing balance of cenvat credit of Rs.1,64,254/- as on 31.03.2014, as declared in the ST-3 return on October, 2013 to March, 2014. However, it appears to Revenue that the appellant had wrongly taken cenvat credit over and above the said amount, of Rs.4,91,757/- as opening balance, instead of Rs.1,64,254/- in their books of accounts and register as on 01.04.2014. Therefore, the differential amount of Rs.3,27,503/- appears to have been taken excess credit, wrongly.

6. Learned Counsel further explains that this amount was due to the error of omission while accounting the input credit. The return for the period half yearly ending 31.03.2014 was filed, was due on 25.04.2014 and the last date for revising the same was 24.07.2014. However, as the audit was under progress and the accounts of appellant were finalised on 03.09.2014, only at that time the error in taking the credit short and found out, and accordingly the appellant took the balance credit pertaining to the financial year 2013-14 in the books of accounts and cenvat credit register. Thus, there was no malafide on the part of the assessee. The show cause notice dated 28.03.2018 was adjudicated ex-parte (as the appellant has failed to furnish reply to the show cause notice) and the show cause notice was confirmed alongwith imposition of penalty under Section 78.

7. Being aggrieved, the appellant preferred appeal before the Commissioner (Appeals) but the same was rejected by non-speaking and cryptic order.

8. Heard the parties.

9. Having considered the rival contentions, I find that the appellant has contended that the amount of Rs.14,36,098/-, which was payable under reverse charge mechanism have been paid and the details mentioned in ST-3 return filed by the appellant from time to time for the period. Such payments were made vide various challans as mentioned in the ST-3 return. Copies of the challans were also enclosed before the Commissioner (Appeals) alongwith copy of the return.

10. On going through the impugned order-in-appeal, I find that learned Commissioner (Appeals) has not cared to verify the payments of taxes already made for which facts were led before the Commissioner (Appeals), and summarily rejected the contention observing that on the one hand the assessee is contesting the allegations and simultaneously they have deposited the amount with challan. It is further observed that no supporting / evidences were submitted by the appellant facilitating the Adjudicating Authority to verify the correctness of their claim.

11. I find from the aforementioned observations, there is total dereliction of duty in passing a reasoned order in accordance with law, as the appellant submitted that they have already paid the duty. It was the duty of the Commissioner (Appeals) to get verified such claims. Under no circumstances, such claim of the appellant can be rejected summarily by a non-speaking order. The appellant has also contested the show cause notice as bad, for the period April, 2012 to

March, 2015, for invoking extended period of limitation, under the facts and circumstances.

12. On the issue of limitation, I find that the only allegation in the show cause notice is that the show cause notice is issued pursuant to AG audit. It is further observed that had the audit not been conducted, the facts would have remained unearthed. It appears that the appellant had wilfully suppressed the facts with intent to evade payment of service tax.

13. I find that the allegation in the show cause notice is not sufficient for invocation of extended period of limitation, as admittedly, the appellant has maintained regular books of accounts which are audited by auditor nominated by the AG of State. Further, the appellant is registered assessee and filed their returns regularly and deposited the taxes as admitted by them. Accordingly, in the facts and circumstances of the case, I hold that extended period of limitation is not invocable and accordingly the demand for the period April, 2012 to March, 2015 is set aside on this ground. The amount of Rs. 42,467/- and Rs.1,49,752/- are not contested as stated by the learned Counsel at the time of hearing and further states that the said amounts has already been deposited. Further, I find that the Commissioner (Appeals) has not recorded and not given any finding with respect to the ground of taking of excess credit of Rs.3,27,503/-, which has been explained by the appellant, that the same was due to cenvat credit taken short, which was noticed later on in the month of September, 2014 when audit was finalised. In view of the cogent explanation

given by the assessee, this ground is also allowed in favour of the appellant and the demand of cenvat credit is set aside.

14. Under the facts and circumstances as noticed above, I find that there is no contumacious conduct of fraud or suppression of facts by the appellant, the penalty imposed under Section 78(1) Rs.3,69,970/- or (Rs. 3,27,503/- + Rs. 42,467/-) is set aside. Further penalty of Rs. 1,49,752/- under section 78 is also set aside. Accordingly, the appeal is allowed and the impugned order stands modified.

(Dictated and pronounced in open Court).

(Anil Choudhary)
Member (Judicial)

Pant