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

Service Tax Appeal No.51536 of 2022-SM

(Arising out of Order-in-Appeal No.16(SM)/ST/JPR/2022 dated 01.02.2022 passed by the Commissioner (Appeals), Central Excise & Central Goods & Service Tax, Jaipur).

M/s. Rajcomp Info Services Ltd. **Appellant**
C-Block, 1st Floor,
Yojana Bhawan,
Jaipur (Rajasthan).

VERSUS

Commissioner, Central Excise & **Respondent**
Central Goods & Service Tax,
NCRB, C-Scheme, Statue Circle,
Jaipur (Rajasthan).

APPEARANCE:

Shri Kunal Aggarwal, Advocate for the appellant
Shri Mahesh Bhardwaj, Authorised Representative for the respondent

CORAM:

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

FINAL ORDER NO. 51057/2022

DATE OF HEARING/DECISION:02.11.2022

ANIL CHOUDHARY:

The appellant is a Government of Rajasthan Undertaking registered with the Department and they are engaged in providing various IT services. The appellant also receives various input services, on some of which, they are liable to pay service tax under Reverse Charge Mechanism. Pursuant to audit of the records, it appears that the appellant have taken irregular credits of Swatch Bharat Cess, availed cenvat credit 'on rent-a-cab service', which did not qualify under Rule 2(l) of Cenvat Credit Rules for taking credit of common input services, for which an amount of Rs.2,74,246/- was reversible under Rule 6(3). They appeared liable to pay service tax on the receipt of 'rent a cab service' under RCM of Rs.1,75,154/-, on receipt of legal consultancy services, they are liable to pay service tax under RCM of Rs.82,627/-, in receipt of maintenance service, for which service tax of Rs. 88,597/- was payable under RCM and further on receipt of Rs.1,35,000/- under the Act 'Management Consultancy Services' of Rs. 20,250/-. All these amounts totaled Rs. 46,96,330/-, which was paid by the appellant on 07.01.2020 under intimation to the Revenue. However, the appellant have not paid interest applicable under Section 75.

2. Show cause notice dated 3.2.2020 was issued with proposal to demand service tax of Rs.46,96,327/- with proposal to appropriate the matching amount already deposited with proposal to demand interest and penalty under Section 78. In reply to show cause notice, the appellant submitted reply on 26.05.2020 mentioning that they are not contesting the show cause notice. They have already deposited the tax demand and have further paid interest amounting to Rs.31,95,474/- payable under Section 75 on 22.05.2020. Under circumstances the appellant have prayed that the proposal to impose penalty may be dropped. The show cause notice was adjudicated vide order-in-original dated 20.10.2020 and demand was confirmed along with appropriation of the amount of tax and interest under Section 75. Further, equal amount of penalty was imposed of Rs.46,96,327/- under Section 78 of the Finance Act. Being aggrieved, the appellant preferred appeal before the ld. Commissioner (Appeals), who vide impugned order-in-appeal have rejected the plea of time bar and further held that there is suppression on the part of the appellant in disclosing their affairs to the Department and further observing that as they did not pay the interest under Section 75, show cause notice was rightly issued. Accordingly, upheld the penalty under Section 78.

3. Assailing the impugned order, the ld. Counsel for the appellant urges that under Section 73(3), it is provided that, "where service tax is not paid or short paid, an assessee on his own ascertained thereof or on the basis of the tax ascertained by a Central Excise officer, before service of notice on him under sub-section (1) in respect of such service tax and inform the officer of such payment in writing, who on receipt of such information shall not serve any notice under section 73(1) in respect of the amount so paid. The proviso to Section 73(3) provides that if the Central Excise Officer in his opinion finds that some amount is still payable, he shall proceed to recover such amount in the manner specified. Further, Explanation (1) to Section 73(1) provides that interest under Section 75 is payable on the amount paid by the person under this sub-section and also the amount of short payment of service tax, if any, as may be determined by the Central Excise Officer, but for this sub-section. Further, Explanation (2) provides that "no penalty under any of the provisions of this Act or the Rules made thereunder shall be imposed in respect of payment of service tax under this sub-section and interest thereon."

4. In view of the provisions, ld. Counsel states that no penalty was imposable upon them under Section 78. Further, he urges that even otherwise, the appellant is a Public Sector Undertaking and they have maintained proper records of their transactions and the demand has been raised pursuant to audit objection based on the records maintained in the normal course of business. Thus, the issue is wholly interpretational in nature, there being no element of suppression.

5. Learned Authorised Representative for the respondent relies on the impugned order.

6. Having considered the rival contentions, I find that the appellant have maintained proper records of the transactions and the issue is wholly interpretational in nature. Further, I hold that the appellant is entitled to benefit of Section 73(3) as they have deposited the amount demanded pursuant to audit on 07.01.2020, which is prior to issue of show cause notice. I further find that the Revenue have not calculated and pointed out the interest payable by the appellant. Further, such amount of interest has been immediately deposited upon receipt of the show cause notice before the adjudication order.

7. In this view of the matter, I hold that the penalty under Section 78 is not imposable. Accordingly, the impugned order is set aside and the appeal is allowed. Penalty imposed is also set aside.

8. In the result, the appeal is allowed.

(Order dictated & pronounced in open court).

(Anil Choudhary)
Member (Judicial)

Ckp