CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH - COURT NO. II
Service Tax Appeal No. 51437 of 2022 (SM)

(Arising out of Order-in-Appeal No. 02(SM)/ST/JPR/2022 dated 10.01.2022 passed by the Commissioner (Appeals), Central Excise & Service Tax, CGST, Jaipur.)

M/s Construction Group **Appellant**
33, Arya Nagar,
Muralipura, Jaipur

VERSUS

Commissioner, CGST-Jaipur I **Respondent**
C.R. Building,

C-Scheme, Jaipur-302005

APPEARANCE:
None for the Appellant
Shri Mahesh Bhardwaj, Authorised Representative for the Respondent

CORAM:

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

FINAL ORDER NO. 50227/2023

Date of Hearing: 15.02.2023
Date of Decision: 15.02.2023

ANIL CHOUDHARY:

Appellant is absent on call. Heard Learned AR for revenue and perused the case records.

2. As regards the demand for the year 2010-11 is concerned, I hold that the same is time barred and accordingly set aside as the show cause notice was issued on 08/12/2016.

3. So far the demand for the year 2011-12, Rs. 75,325/- is concerned, it is the contention of the appellant that in this year, there is an excess payment of service tax of Rs. 40,712/- Further, found that the court below have not appreciated the facts in right earnest and erroneously confirmed the demand. This ground is

allowed by way of remand to the Adjudicating Authority who shall hear the appellant-assessee and pass a reasoned order in accordance with law.

4. The next ground of appeal is imposition of penalty under Section 78. So far penalty under Section 78 is concerned, the appellant have urged that they have provided service to charitable institutions which was exempted from levy of service tax, as there was no deliberate case made out of short payment or evasion of service tax. In any view of the matter, the issue is wholly interpretational in nature and the amount of service tax short paid or not paid is not due to any mis-interpretation, suppression or fraud. I find from the pleadings in the show cause notice and the allegation therein, that the whole demand have been raised pursuant to audit objections and due to dispute in calculation of tax. I find that appellant have maintained proper books of accounts, which is the basis of raising the demand. In this view of the matter, I set aside the penalty under Section 78 of the Finance Act.

5. The next ground is regarding confirmation of penalty of Rs. 5000/- under Section 77 of the Act. Going through the records I find that the penalty was imposed for late filing/non-filing of the returns. Accordingly, the penalty under Section 77 is confirmed.

6. As per aforementioned findings and observations, the appeal is allowed in part as indicated hereinabove.

(order dictated in the open court)

Anil Choudhary
Member(Judicial)

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