CUSTOMS EXCISE & SERVICE TAX APPLELLATE TRIBUNAL PRINCIPAL BENCH, NEW DELHI.

COURT NO. II

Service Tax Appeal No.52148 of 2022 (SM)

[Arising out of Order-in-Original No.02/COMMR/ST/UJN/2020-21 dated 03.03.2021 passed by the Commissioner of Central Goods & Service Tax and Central Excise, Ujjain, Madhya Pradesh]

M/s. Goods Flow Engineering Services **Appellant**
Krishna Bhawan, H.No.27 Mehtwas,
Birlagram, Nagda
Distt., Ujjain-456 331 (M.P.)

VERSUS

Commissioner of Central Goods & Service Tax and Central Excise, **Respondent**
29, Bharat Puri, Administrative Area,
Ujjain-456 010 (M.P.).

APPEARANCE:

Shri Mahendra Chandaliya, Advocate for the appellant.
Shri Vishwajeet Saharan, Departmental Representative for the respondent.

CORAM:

HON'BLE SHRI ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO. 50315 /2023

DATE OF HEARING/DECISION:03.03.2023

ANIL CHOUDHARY:

Heard the parties.

2. The issue involved in this appeal is whether the penalty under Section 78 and 77 (1)(c) have been rightly imposed.

3. The brief facts are that the appellant is a registered assessee under the Service Tax Provisions, filing their returns regularly and maintaining proper books of accounts. The appellant was rendering service during the period 2013-2014 to 2017-2018 (June, 2017) mainly under the Head "Works

Contract Service' "Erection Commissioning Service", "Maintenance Management" and "Manpower Recruitment Service". The Revenue received some data from the Income Tax Department for the period 2013-2014 to 2017 to 2018 (June, 2017). It appeared to Revenue that there is some suppression of turnover and/or mis-classification of taxable service. The Revenue commenced inquiry through its headquarters (Preventive) asking for certain documents relating to assessment of service tax. In response, the appellant provided copies of their balance sheet for the relevant period along with copies of work agreements and also provided copies of their Form-26 AS (Statement of TDS under Income Tax). There appeared some difficulty in contacting the appellant/assessee due to their change of address. On going through the data as per Service Tax Returns for the period April, 2013 to June, 2017, it appeared to Revenue that there is some error on the part of the assessee in claiming abatement. Accordingly, show cause notice dated 15.02.2019 was issued invoking the extended period of limitation. The Revenue calculated service tax liability without allowing any abatement on the basis of gross turnover, as per Profit & Loss Account and as per Income Tax Records and thus, proposed a demand for Rs.1,98,60,297/- including cess. Further, demand was raised proposing disallowance of cenvat credit amount of Rs.4,22,485/- along with interest and further penalty was proposed.

4. The appellant contested the show cause notice and filed their detailed submissions, which has been reproduced in the impugned order-in-original.

5. The appellant gave calculation of service tax liability availing abatement under Notification no.30/2012-ST. As per appellant, there was a differential duty payable as follows:-

Table

Year	Service Tax payable	Service Tax paid	Difference
2013-14	3058,010	23,01,552	7,56,458
2014-15	4,031,657	3,46,430	5,71,227
2015-16	1,928,646	19,18,805	9,841
2016-17	1,798,673	17,49,443	49,230
Total	1,09,10,404	94,30,230	13,86,756.00

6. The said differential amount was paid by the appellant during the adjudication proceedings as follows:-

(Amount paid in Rs.)	(payment made on)
Rs. 5,00,000/-	22.07.2020
Rs. 2,86,756/-	04.08.2020
Rs. 6,00,000/-	06.08.2020

Total Rs.13,86,756/-

7. Considering the contentions of the appellant, ld. Commissioner confirmed a truncated amount of Rs.16,49,733/-(Rs.13,86,756/- already admitted plus Rs.2,52,977/-) due to difference in abatement claim, as the service was provided to individual, and also not allowing cum tax benefit. Further, ld. Commissioner appropriated the amount already deposited Rs.13,86,756/-. Further, the amount of Rs.2,70,652/- was disallowed out of the Cenvat Credit taken (being cenvat credit taken on insurance services Rs.1,25,018/- and Rs.1,45,634/- as the appellant could not produce relevant

vouchers in support thereof). Further, penalty has been imposed of Rs.16,49,733/- under Section 78 and Rs.2,70,652/- under Rule 15 of CCR read with Section 78 and further, penalty of Rs.10,000/- has been imposed under Section 77 (1) (c) of the Act. For late filing of Return, penalty under Section 70 read with Rule 7 (1)(c) of Rs.51,500/- has been demanded, which is not contested.

8. Ld. Counsel for the appellant assailing the impugned order urges that admittedly the appellant have been maintaining proper books of accounts and records and was registered with the Department and have filed periodical returns regularly and also paid the admitted taxes. Further, after issue of show cause notices, the appellant on finding some difference in their tax calculation, has paid the differential amount of Rs.13,86,756/- , *suo moto,* which has been appropriated in the impugned order. Further, it is evident that there was no major error or suppression on the part of the appellant, as against proposed demand of more than Rs.2 Crores, confirmed in the impugned order is about Rs.19 lakhs only. Further, urges that cenvat credit on Insurance Services of Rs.1,25,018/- is fully allowable and has been wrongly disallowed as the same has been taken in the matter of Group Insurance of the staff of the appellant. Such Group Insurance is essential as in the nature of services provided, there is always possibility of any worker getting injured or killed. Accordingly, prays for allowing their appeal with consequential benefits.

9. Ld. Authorised Representative for Revenue relies on the impugned order.

10. Having considered the rival contentions, I find that it is evident on the face of the impugned order, that no case of suppression or fraud, or mis-representation is found on the part of the appellant/assessee. In this view of the matter, I set aside the penalty under Section 78 of the Finance Act and also under Section 77(1)(c) of the Act. I further hold that the appellant is entitled to cenvat credit of Rs.1,25,018/-, which is towards Group Insurance taken for the medical and accident claim benefits. In the facts and circumstances, I also set aside penalty under Rule 15 of Cenvat Credit Rules read with Section 78 of the Act. I further take notice that the appellant have also deposited the differential amount payable (during adjudication proceedings) as per the impugned order. I also direct the Adjudicating Authority to recalculate their tax liability as per order of this Tribunal and after adjustment, if any, amount is found paid in excess, grant the refund to the appellant of the balance amount in cash. Appeal is allowed. Impugned order is modified.

[Order dictated & pronounced in open court]

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Ckp.