CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.

PRINCIPAL BENCH - COURT NO. II

Service Tax ROA Application No. 50211 of 2023 (SM)
in
Service Tax Appeal No. 52599 of 2019

(Arising out of Order-in-Appeal No.190(CRM) ST/JDR/2019 dated 26.02.2019 passed by the Commissioner (Appeals), CGST & ST, Jodhpur.]

M/s The Post Master **Appellant**
Head Post Office, Ratangarh,
Distt, Churu (Rajasthan)-331022

VERSUS

Commissioner of Central Goods And Service Tax, Customs And Central Excise, Jodhpur I **Respondent**
G-105, New Industrial Area,Opp.
Diesel Shed.
Basni/Jodhpur,
Rajasthan-342001

APPEARANCE:
Mr. Manoj Chauhan, Chartered Accountant for the appellant.
Mr. Mahesh Bhardwaj, Authorised Representative for the respondent

CORAM:

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

FINAL ORDER NO. 50667/2023

DATE OF HEARING: 04.05.2023
DATE OF DECISION: 04.05.2023

ANIL CHOUDHARY:

Heard the parties.

2. The issue involved in this appeal of the appellant Post Office (Department of Government of India under Ministry of Post & Telegraph) whether they have rightly discharged the service tax liability through book adjustment for the period April 2015 to June 2017.

3. The brief facts are that the appellant is Post Master in district Churu having Service Tax registration. Appellant is engaged in providing couriers, business auxiliary service and life insurance service. It appeared to revenue that appellant have failed to pay service tax amounting to Rs. 14,84,543/- including cess for the period April 2015 to June 2017 and contravened the provisions of the Act read with the Rules. It is further appeared that appellant have paid some portion of service tax through book adjustment. Accordingly, show cause notice dated 28.03.2018 was issued demanding service tax including cess. Further penalty was also proposed under Section 76 of the Finance Act.

4. The SCN was adjudicated vide OIO dated 26.06.2018 on contest, and the proposed demand which had been admittedly paid by way of book adjustment, as noted in para 3 of the SCN, was demanded alongwith interest and further penalty of Rs. 1,48,454/- was imposed under Section 76.

5. Being aggrieved the appellant preferred appeal before the Commissioner (Appeals). As there was delay in filing the appeal of about 141 days, the Commissioner (Appeals) was pleased to dismiss the appeal as he had no power to condone the delay of more than 30 days. Being aggrieved the appellant is before this Tribunal.

6. Assailing the impugned order, learned Counsel for the appellant Mr. Manoj Chauhan, Chartered Accountant *inter alia* urges that admittedly the appellant in the government department and the appellant post master has to work as per the official norms and practices. As per the norms and practice, the appellant have paid the amount of service tax by way of book adjustment, and the same amount

have been demanded again on the ground that the payment is not as stipulated under the provisions of the Finance Act r/w the service tax rules thereunder. Learned Counsel further urges that this is a periodical show cause notice and similar show cause notices were issued in the past for the period 2007-2012 and the learned Commissioner (Appeals) *vide* Order-in-Appeal dated 16/1/2018, in appellants own case have been pleased to allow the appeal under similar facts and circumstances observing as follows:

> "9. I find that the appellants have credited the Govt. Account on account of service tax by way of book adjustment, irrespective of the fact that the same has been deposited by them by not following the procedures, verbatim as provided under the provisions of the Finance Act, 1994. The appellants being a Govt. department cannot be attributed with any malafide intention to evade payment of Service tax. It also does nto appear just & proper to hold that the appellants have wilfully hidden any facts from department. The matter is only an adjustment of tax between two Govt. Departments, which has been doen by way of entries in their respective books of accounts. Hence I hold that the payments made by way of book adjustment are legal & proper & no demand of Service Tax on this count is sustainable.
>
> 10. I find that on identical issue, the Hon'ble CESTAT, Kolkata vide Final Order No. FO/A/75208/2017 dated 08.03.2017 in case of the Superintendent of Post Office V.s CCE Gawahati has allowed the appeal by observing that the appellant paid the tax and there may be some procedural lapses for which the demand of tax is not sustainable in the eyes of law."

7. Learned AR for revenue relies on the impugned order.

8. Having considered the rival contentions, I allow restoration of the appeal, in the interest of justice.

9. In view of the facts and circumstances and the issue already having been decided in favour of the appellant, which order have attained finality, I allow this appeal and set aside the impugned order.

Appellant shall be entitled to consequential benefits in accordance with law.

10. Both Appeal and Miscellaneous application are allowed.

(order dictated in the open court)

(Anil Choudhary)
Member (Judicial)

sb