CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL NEW DELHI.

PRINCIPAL BENCH – COURT NO. II

Service Tax Appeal No.51451 of 2023 (SM)

[(Arising out of Order-in-Appeal No.BHO-EXCUS-001-APP-215-21-22 dated 23.02.2022 passed by the Commissioner (Appeals), Central Goods & Service Tax and Central Excise, Bhopal (M.P.)]

M/s. Ram Kumar Sharma **Appellant**
Near Petrol Pump, In front of
Deewan Palace Sabalgarh, Morena,
M.P.-476 229.

VERSUS

Commissioner of Central Goods & Service Tax & Central Excise, **Respondent**
48 A, Administrative Area, Arera Hills,
Bhopal,
Madhya Pradesh 462 011.

APPEARANCE:

None for the appellant.
Shri Gopi Raman, Authorised Representative for the Respondent.

CORAM:

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

FINAL ORDER NO.50783/2023

DATE OF HEARING/DECISION: 01.06.2023

Anil Choudhary:

The appellant is absent on call. This matter had come up for hearing first time on 11.04.2023. Notice of hearing was already served on the appellant. However, the notice on the Advocate sent by speed post was returned undelivered. Thereafter, this Tribunal issued directions to issue fresh notice as appellant was absent on 4th May, 2023. As per office report, notice sent to appellant on 11.05.2023 had been delivered on 15th May,

2023. Whereas the notice sent to the Advocate has been returned back with the remark – "addressee absent – intimation served". Thus, it appears that the notices have been served twice but the appellant has failed to take steps for effective appearance. Further, there is no application requesting for adjournment. Accordingly, the appeal is taken up for hearing with the assistance of ld. Authorised Representative for Revenue.

2. The brief facts are that the appellant is an individual engaged in providing works contract service and is also providing services to insurance company as agent and is registered with the Department. The appellant have also filed their returns regularly in form ST-3.

3. Based on the third party information – from Income Tax Department, on the basis of Form 26 AS, it appeared to Revenue that during the financial year 2013-2014, the appellant is required to pay service tax on the differential value of Rs.9,17,914/- on the basis of gross receipts as per Form 26 AS, as compared with the ST-3 Returns. Accordingly, show cause notice dated 15.04.2019 was issued invoking the extended period of limitation proposing to demand service tax of Rs.1,13,534/- on the differential value of Rs.9,17,941/-. The gross receipts as per Form 26 AS are as under:- Table

Sl.No.	Name of Client	Amount
1.	Account officer, Account Unit (O&M), MPMKVV Co. Ltd., Morena (hereinafter referred to as the "AO", Morena')	69,763
2.	Krishi Upaj Samiti, Kailaras	1
3.	LIC of India, Morena	1,07,633
4.	Madhya Pradesh Madhya Kshetra Vidyut Vitran Co. Ltd., (hereinafter referred to as the "MPMKVV")	17,66,054
	Total	19,43,451

4. The appellant contested the show cause notice by filing written submissions dated 13.11.2019 along with supporting documents. It was, *inter alia,* contended that they are registered with the Department. Further, stated that they have provided "Works Contract Service" to MPMKVV Co. Ltd., Morena. Calculation sheet of Service tax was also submitted giving the calculation of service tax liability as follows:-

	Gross Receipts as per 26AS			1,943,451.00
Less	Other receipts not liable to service tax			107,644.00
	Taxable Contract receipts			1,835,817.00
Less	other duties and taxes included in the above		(-)	145,449.00
	Net supply liable to service tax			1,690,368.00
Less	abatement of 50% of value as per Notification no. 30/2012 dt. 20.06.2012 being balance Liability attributable to service recipient.			845,184.00
Less	Abatement as per notification No. 24/2-12 dt.6.6.2012.			256,803.15
(a)	1. 40% of 50% of Rs. 64947.00 i.e. payment Related to execution of original work.		12,990.00	
(b)	2. 30% of 50% of Rs.1625421.00 i.e. payment Related to repair /maintenance work.		2,43,813.15	
	Balance taxable services			5,88,380.85
	Service Tax	12%	70,605.70	
	Edu. Cess	0.24%	1,412.11	
	H.E. Cess	0.12%	706.06	
	Total tax liability		72,723.87	
	Total service tax deposited		76,908.00	

Date	Challan No.	Amount
13.02.2014	424	926.
07.06.2014	2043	30,185.00
07.06.2014	2007	6,721.00
07.06.2014	1980	31,500.00
20.10.2014	747	7,576.00
		76,908.00

5. It was also urged that the receipts from LIC of India for providing services is not taxable in the hands of the appellant, as tax is payable by the service recipient. The appellant also produced copies of work orders, invoices, etc. However, the Adjudicating Authority by observing that there is no signature/certification on the calculation sheet, did not consider

the same nor allowed the benefit of abatement for works contract and confirmed the proposed service tax liability of Rs.1,13,534/- along with interest and further imposed equal amount of penalty under Section 78 of the Act. Penalty of Rs.10,000 was also imposed under Section 77 of the Act.

6. Being aggrieved, the appellant preferred appeal before the ld. Commissioner (Appeals), inter alia, on the following grounds:-

> *"1. That, impugned order dt. 07.02.2019, creating tax demand of Rs. 113534/- is arbitrary, illegal, unjustified and seems to have been passed without considering facts of the case available on record, in proper context.*
> *2. That, denial of benefit of exemption notification No. 24/2012 dt. 06.06.2012 and 30/2012 dt. 20.06.2012 is illegal and unjustified.*
> *3. That, learned adjudicating authority ought to have considered the submission and calculation regarding tax liability as per regular books of accounts of appellant, before proceedings to levy tax on the appellant.*
> *4. That, learned adjudicating authority failed to appreciate the fact of payment of tax of Rs. 76,908/- by the appellant as per his books results.*
> *5. That, levy of penalty of Rs. 10,000/- for non compliance is illegal, unjustified and unwarranted in the facts of the case, where in detailed submission filed by the appellant is on record.*
> *6. No proper opportunity of being heard was afforded to the applicant.*
> *7. Other grounds will be urged at the time of hearing."*

7. The Commissioner (Appeals) vide impugned order-in-appeal recalculated the service tax liability as follows:-

<u>Table</u>

Sl. No.	Name of client	Service tax
1.	AO, Morena	8,623
2.	MPMKVV	97,164
Total Service tax payable		1,05,787
Service tax paid as per ST-3 returns		72,761
Balance service tax to be paid		33,026

8. Accordingly, the Commissioner (Appeals) allowed the appeal in part, setting aside the demand of Rs.80,508/- and upholding the demand of Rs.33,026/-. Further, proportionate penalty of Rs.33,026/- was confirmed

under Section 78 of the Act and further penalty of Rs.10,000/- under Section 77 was upheld.

9. Being aggrieved, the appellant is in appeal before this Tribunal, *inter alia,* on the ground that the benefit abatement under Notification no.24/2012-ST has been arbitrarily denied, when it is admittedly a case of Works Contract. Further, benefit of reduced tax liability, under Reverse Charge Mechanism, under Notifications Nos.30/2012-ST has also been denied in respect of contract receipts from AO & MPMKVV Co. Ltd, Morena. Further, urged that the Court Below have erred in calculating the tax liability on the gross tax receipts as per the certificate of the concerned department, wherein it is mentioned that the service tax @5.5% (at source) was deducted and deposited by the Department without considering the actual tax liability. It is further urged that although the Commissioner (Appeals) held that the appellant is entitled to the benefit of Notification No.24/2012-ST and 30/2012-ST, however, failed to calculate the benefit of the same due to oversight . It is also urged that the tax calculation submitted by the appellant has been arbitrarily rejected without finding any error in the same. Accordingly, prays for setting aside the impugned order including setting aside the penalty.

10. Considering the facts and circumstances and contentions of the ld. Authorised Representative, I find that the appellant have submitted calculation of service tax liability, both at the assessment stage and before the Commissioner (Appeals). Both the Court below without finding any error in the said calculation have arbitrarily rejected the same and have made their own calculation, resulting into confirmation of demand and imposition of penalty. I find that such rejection of calculation of service tax and the ST-

3 Return filed by the appellant is bad in law, without finding any fault or error in the same. The ST-3 Returns submitted by an assessee is binding on the Department, unless the Department finds material faults or errors in the same. Further, issue of show cause notice on the apparent difference in the gross turnover as per balance sheet or ST-3 Return, as compared with Form 26 AS have been deprecated by this Tribunal in several matters. Form 26 AS is not the prescribed document in the scheme of Service Tax Assessment and the same cannot be adopted blindly without any attempt to reconcile the difference. On perusal of the calculation submitted by the appellant of their tax liability, I find no error in the same. Further, the appellant against the tax liability of Rs.72,724/-, have already paid an amount of Rs.76,908/-. Thus, have paid higher amount than the tax liability. Thus, I find the whole exercise as unwarranted and mis-conceived on the part of the Department.

11. I also find that the show cause notice is hit by limitation as the same has been issued after more than five years.

12. In view of my aforementioned findings and observations, the impugned order is set aside and the appeal is allowed. The appellant is entitled to consequential benefit in accordance with law.

[Order dictated & pronounced in open court]

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Ckp.