CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Service Tax Appeal No. 54894 of 2023 [SM]

[Arising out of Order-in-Appeal No. 306 (RLM)ST/JPR/2022 dated 29.12.2022 passed by the Commissioner of CGST, Excise & Customs (Appeals), Jaipur]

M/s. Hakim Singh Contractor **...Appellant**
Purani Chawani, Bari Road,
Dholur (Raj) - 328001

VERSUS

Commissioner of Central Goods and Service Tax, Customs and Central Excise, Alwar **...Respondent**
A-Block, Surya Nagar,
Alwar, Rajasthan - 301001

APPEARANCE:
Shri Ravi Gupta, Advocate for the Appellant
Shri Rohit Issar, Authorized Representative for the Respondent

CORAM: HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)

DATE OF HEARING: 16.11.2023
DATE OF DECISION: 16.11.2023

FINAL ORDER No. 51645/2023

DR. RACHNA GUPTA

Present appeal has been filed to assail the Order-in-Appeal No. 306(RLM)ST/JPR/2022 dated 29.12.2022. The relevant facts in brief for the purpose are as follows:

The appellant is engaged in providing taxable services namely Construction Services and the Works Contract Services. On the basis of information about the consideration received by the appellant for the Financial Year 2012-13 and 2013-14 that the appellant was asked vide letter dated 11.02.2014 to give the relevant records about the discharge of their service tax liability for the aforesaid two years. Since no response was received by the appellant and no document was provided for ascertaining the taxable value, the appellant was observed to be liable to pay service tax amounting to Rs.78,68,981/- on the gross amount of Rs.6,36,64,894/- as received during the period from 01.07.2012 to 31.03.2014. Resultantly, vide show cause notice bearing No. 716 dated 26.04.2018, the aforesaid amount was proposed to be recovered along with the appropriate interest and the proportionate penalties. The said proposal was initially confirmed vide the Order-in-Original No. 31/2021-22 dated 21.12.2021. The appeal against the said order has been rejected vide the order under challenge. Being aggrieved the appellant is before this Tribunal.

2. I have heard Shri Ravi Gupta, learned Advocate for the appellant and Shri Rohit Issar, learned Authorized Representative for the department.

3. Learned counsel for the appellant has submitted that the appellant had been discharging their service tax liability and the regular payments were being made. The challan details were also provided to the department. The list of those challans is brought to the notice as are annexed on the record. Learned counsel further has mentioned that during the disputed period an amount of Rs.8,14,159/- (as apparent from those challans) was deposited by the appellant towards the discharge of their service tax liability. However, the payment was the short payment and an amount of Rs. 2.54 lakhs approximately was still to be deposited by the appellant. The appellant is therefore not challenging the liability as has been proposed and confirmed against the appellant. Learned

counsel has impressed upon that the demand for the Financial Year 2012-13 and 2013-14 has been raised vide the show cause notice dated 26.04.2018 i.e. after invoking the extended period of limitation. It is impressed upon that there was no misrepresentation nor there is any evidence proving the same as against the appellant. Hence, the extended period has wrongly been invoked. The order under challenge is prayed to be set aside on the said ground itself. Resultantly, appeal is prayed to be allowed.

4. While rebutting these submissions, learned DR has mentioned that from the show cause notice itself, it is apparent that the entire time was taken by the appellant as he failed to provide the requisite documents to the department. He was repeatedly being asked till April 2014, receiving no response over these years that the impugned show cause notice was issued. Hence, the same cannot be alleged as invocation of the extended period of limitation. Learned DR has further relied upon the findings in the Order-in-Appeal/order under challenge in Para 8 and 9 thereof. Impressing upon that there is no infirmity committed by Commissioner (Appeals) while relying upon the decision of the superior courts as mentioned in the aforesaid two paragraphs. The order is prayed to be upheld and the appeal is prayed to be dismissed.

5. Having heard the rival contentions and perusing the entire records, I observe and hold as follows:

5.1 It is observed that the narrow scope of the impugned appeal is to adjudicate as to whether the show cause notice served upon the appellant hits by the time bar limit and the department was not supposed to invoke the extended period of limitation. The appellant has otherwise acknowledged the short payment of service tax during the disputed period and has not challenged the quantum of demand proposed and confirmed against the appellant. It is apparent from the record that after receiving the specific information that the appellant has short paid service tax, a letter dated 11.02.2014 was served upon the appellant requiring them to produce requisite documents and to submit the reply with the said specific information. It is very much apparent from the show cause notice itself that the said information/documents were never provided by the appellant to the department.

5.2 I observe that the department has repeatedly sent letters on 26.03.2014, 01.05.2014, 25.09.2014, 16.04.2015, 03.10.2017 and lastly on 05.04.2018 to the appellants, asking for the documents as that of Income Tax Returns, Balance Sheets, Form 26AS, VAT Returns, Work Orders, Invoices etc. for both the Financial Years in dispute (2012-13 and 2013-14). Since nothing was provided nor even appellant responded that the impugned show cause notice was served upon the appellant on 26.04.2018. No reason has been brought on record by the appellant nor has been submitted by making submissions even today about the said delay on part of the appellant and about the reason as to why none of those documents were never been provided, the delay for the entire period since February 2014 till April 2018 is held to be appellant’s fault. Hence benefit cannot be extended in favour of the appellant for the said fault. Resultantly, it cannot be held that the impugned show cause notice has been issued by invoking the extended period of limitation. Had there been a response by the appellant to the letter dated 11.02.2014, there is nothing on record to even presume that department would have delayed issuing the impugned show cause notice. In view of these observations, I do not find any reason to differ from the findings as mentioned in Para 8 and 9 of the order under challenge (Order-in-Appeal).

5.3 As far as the plea of imposition of penalty is concerned, no doubt the appellant had deposited the amount prior the issuance of show cause notice but apparently and admittedly the amount was short paid. As already discussed above, the appellant failed to come forward to state the true facts, circumstances and to produce the relevant documents. I have no reason to differ from the findings that the said act and conduct of the appellant amounts to suppression of facts. The penalty under 77(1)(c) has been levied on account of not furnishing the information to the department. As already discussed above, that is an apparent and admitted fact, hence no question arises for setting aside the said penalty. As already held that the act of appellant amounts to an act of suppression of facts, there is no infirmity in the imposition of penalty under Section 78 of the Finance Act. Though learned counsel had made another submission that the penalty imposed is disproportionate, it has been imposed 100% whereas it is on record that an amount of Rs.8,14,159/- was deposited by the appellant even prior the issuance of show cause notice. On this ground learned counsel has prayed for confining the penalty for the balance amount of Rs. 2.57 lakhs approximately. Since the findings of Para

8 and 9 of the order under challenge have been confirmed and it has been held that there is an intentional suppression on part of the appellant. The only possibility of such suppression is an intent to evade the payment of tax as has been appreciated by Commissioner (Appeals) in Para 9 of the order under challenge. I have no reason to differ from the said findings also.

6. In view of the above discussion, I hereby uphold the order under challenge. As the result, the appeal stands dismissed.

[Dictated and pronounced in the open Court]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

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