CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Service Tax Appeal No. 55037 of 2023 [SM]

[Arising out of Order-in-Appeal No. 123(RLM) ST/JPR/2023 dated 31.03.2023 passed by the Commissioner of Central Excise & CGST (Appeals), Jaipur]

M/s. Ronit Logistic Pvt. Ltd. **...Appellant**
Flat No. 502, Plot No. 52-53-54,
Shanti Naga, Ajmer Road,
Jaipur - 302006

VERSUS

Commissioner of CGST & Central Excise,
Jaipur **...Respondent**
NCR Building, Statue Circle,
Jaipur, Rajasthan - 302005

APPEARANCE:
Shri Manmohan Mahipal, Chartered Accountant for the Appellant
Shri Arun Sheoran, Authorized Representative for the Respondent

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

DATE OF HEARING: 29.02.2024
DATE OF DECISION: **28.06.2024**

FINAL ORDER No. 55945/2024

DR. RACHNA GUPTA

The appellant is the holder of service tax registration. The Revenue Department got a third party information received from Income Tax Department that appellant has shown an income of Rs.57,57,068/- for the Financial Year 2012-13 in their income tax returns from "Sale of Services". The sale of service is a taxable service liable to service tax in terms of provisions of Section 66B of the Finance Act, 1994. Accordingly, vide Show Cause Notice No. 3152-54 dated 26.04.2018 service tax of Rs.7,11,574/- was proposed to be recovered along with the appropriate interest and the proportionate penalties. While adjudicating the said show cause notice the original adjudicating authority vide Order-in-Original No. 28 dated 30.04.2019 had dropped the demand of service tax on the total receipt of Rs.40,53,932/- during the said financial year. However, the demand on the remaining amount of Rs.17,03,136/- i.e. service tax amounting to Rs.2,10,508/- was confirmed. In an appeal against the said order Commissioner (Appeals) vide Order-in-Appeal No. 370/2020 dated 18.08.2020 had remanded the matter back to the original adjudicating authority as the appellant had taken a new fact that the vehicles owned by appellant were also given on hire to various transporters during the impugned period and the said activity is covered under Mega Exemption Notification No. 25/2012-ST dated 20.06.2012. Pursuant to those directions of remand that the original adjudicating authority vide Order-in-Original No. 37/2021-22 dated 31.12.2021 has held that the appellant had not provided the requisite documents. Hence, eligibility of the appellant under Notification No. 30/2012 cannot be ascertained. The order confirming service tax demand of Rs.2,10,508/- along with the interest was again being passed and penalties were imposed as mentioned in the said order. In an appeal against the said order the Order-in-Appeal No. 123/2023 dated 31.03.2023 has been passed rejecting the appeal and upholding the said Order-in-Original. Being aggrieved the appellant is before this Tribunal.

2. I have heard Shri Manmohan Mahipal, Chatered Accountant for the appellant and Shri Arun Sheoran, Authorized Representative for the department.

3. Learned Chartered Accountant for the appellant has mentioned that the demand in the present case has been raised on the basis of the balance sheet of the appellant and the comparison thereof to the Income Tax Return (third party evidence). It clearly shows that the income is received from the vehicles owned by the appellant. The service provided by way of hiring the transport vehicle is exempted by Mega Notification No.25/2012 dated 20.06.2012. The invoice issued and the bilties received from the transporters were duly produced before the adjudicating authorities below giving all requisite details including the vehicle number, date and amount etc. Hence, the findings that no evidence was produced are not sustainable rather the documents sufficiently prove that the appellant duly qualified for the exemption of said mega notification. The appellant otherwise is entitled for SSI Exemption as per Notification No. 33/2012 dated 20.06.2012. Cum tax benefit eligibility has also been prayed in the light of invoices on record. Finally the demand is alleged to be barred by limitation. Order of imposition of penalties also prayed to be set aside for the said reason. While relying upon the decision of this Tribunal in the case of **M/s. Reliance Industries Ltd. reported as 2016 (45) STR 341 (Tri.-Mumbai),** the order is prayed to be set aside and appeal is prayed to be allowed.

4. While rebutting these submissions. The findings in the orders under challenge are reiterated. It is mentioned that the appellant had not responded the show cause notice. The initial Order-in-Original was passed ex parte. Despite it was remanded by Commissioner (Appeals), the appellant had still failed to produce

requisite documents as is apparent from Order-in-Original dated 31.12.2021. The amount for which the documents have been produced i.e. for a value of Rs.40,53,932/- the demand has already been dropped. It is only with respect to remaining amount of Rs.17,03,136/- that the demand for service tax of Rs.2,10,508/- has been confirmed. The fresh plea taken about giving vehicles on hire is not sustainable as there is no bifurcation of amount given. Otherwise also, only six bilties of M/s. Darcl Logistics Ltd. having value of only of Rs.2,12,726/- has been provided. The documents even if considered are still insufficient to falsify observations of the departmental adjudicating authorities. Appeal is accordingly prayed to be dismissed.

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

5.1 After considering the reply to show cause notice dated 17.05.2018 of the appellant, the adjudicating authority partially allowed the appeal in respect of Rs.40,53,932/- being the recipient of GTA services a Pvt. Ltd. Company & dropped the demand of Rs.5,01,066/-. For the remaining amount of Rs.17,03,136/-, the adjudicating authority has confirmed the demand of service tax amounting to Rs.2,10,508/- holding that the appellant has not submitted any document (evidence) showing that this amount also pertains to the above or has been received towards any other exempted service. Now, at the time of personal hearing the appellant has come up with some new facts that the vehicles owned by the appellant were also given on hire to various transporters (GTA) during the period. The transporters provided the service of transportation of goods by road to the consigners/consignees and the charges have been collected by the appellant from those GTA in respect of those vehicles owned by the appellant. The said service provided by the appellant is covered under exemption vide Mega Exemption Notification No 25/2012-ST dated 20.06.2012.

5.2 I find that since the appellant did not facilitate the department in verifying the correctness of their averment till the order under challenge dated 31.03.2023 was passed, the appellant had failed to provide any fresh document with respect to the amount received for which the service tax liability has been confirmed. Pursuant to the directions of remand that bills, invoices and bilties raised by the appellant and recipient of service should have been received and fresh speaking order to be passed thereafter. It is only six bilities that have been produced by the appellant. As pointed by learned Departmental Representative following discrepancies are apparent from those documents:

(i) Photocopy document for only two bilties at Sr. No. 1 & 3 of the chart (out of 6) are provided in appeal book and that also cannot be co related as the invoices do not contain the registration no. of the vehicle.

(ii) Lorry owner details along with PAN no. in the above two bilties is different that Ronit Logistics Pvt. Ltd. who claims to be the owner of these vehicles.

(iii) The bilties mentioned in that chart are not backed by requisite documents in support of their claim.

6. There is no other document for the purpose. The fresh plea of seeking exemption of Mega Notification cannot be adjudicated in the absence of the requisite and sufficient documents. Accordingly, I do not find any infirmity in the findings of the adjudicating authority below. The order under challenge is therefore upheld. Consequent thereto, the appeal is hereby dismissed.

[Order pronounced in the open court on **28.06.2024**]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

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