CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH, COURT NO. 1

SERVICE TAX APPEAL NO. 51221 OF 2017

[Arising out of Order in Appeal No. 31(AB) ST/JPR/ 2017 dated 28.02.2017 passedby the Commissioner (Appeals) Customs, Central Excise & Service Tax, Jaipur]

M/S NAVRATAN PIPE AND PROFILE LTD **Appellant**
SP-6, RIICO Industrial Area,
Khushkhera, Bhiwadi,
District-Alwar (Rajasthan)

Vs.

COMMISSIONER OF CENTRAL EXCISE-ALWAR **Respondent**
Commissionerate, Near Ashiyana Bageecha
Alwar Bye Pass Road, Bhiwadi, District-Alwar
(Rajasthan)

Appearance:
Present for the Appellant : Shri Apoorv Philips, Advocate
Present for the Respondent: Ms. Jaya Kumari, Authorised Representative

CORAM:
HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P. V. SUBBA RAO, MEMBER (TECHNICAL)

Final Order No. 59395 /2024

Date of Hearing : 07/10/2024
Date of Decision : 29/10/2024

P.V. SUBBA RAO:

1. The order dated 28.02.2017[1] passed by the Commissioner of Customs Central Excise (Appeals) Jaipur whereby he upheld the order in original dated 27.02.2013 passed by the Assistant Commissioner, Bhiwadi, Alwar is assailed by M/s Navratan Pipe and Profile Ltd.[2], Alwar in this appeal.

---

1 the impugned order
2 the appellant

2. We have heard Shri Apoorv Philips, learned counsel for the appellant and Ms. Jaya kumari, learned authorised representative appearing for the department and perused the records.

3. Learned counsel for the appellant argued that the Commissioner (Appeals) has committed an illegality in remanding the matter to the original authority and he had no legal authority to remand the matter during the relevant period. Learned authorised representative appearing for the Revenue submitted that the Commissioner (Appeals) did not remand the matter at all but rejected the appeal and upheld the order in original. The relevant portions of the impugned order are reproduced below:

> "6. It is on record that in their Grounds of Appeal the appellant has not challenged the taxability of the services rendered by them, however they have stated that the impugned order is bad in law because it has been passed after corrigendum to the Show Cause Notice dated 01.02.2013 which in turn was issued after three earlier hearings in respect of the same matter on 10.05.2012, 22.08.2012 and 05.11.2012. In order to ascertain the veracity of the contention of the appellant, I have carefully gone through the records of personal hearing as are mentioned on the body of the impugned order itself. I find that under the heading PERSONAL HEARING in para 8 of the Impugned Order the following facts are recorded:
>
> "An opportunity of personal hearing was afforded to the noticee, and personal hearing on 20.02.2013 attended by Shri Gautam Sharma, Advocate and authorized representative of the noticee and reiterated their reply to show cause notice.
>
> From the above recording made in the impugned order it can clearly be seen that there is neither any mention of the earlier hearings as is claimed by the appellant nor there is anything on record which can confirm the authenticity of their claim. As such, the said plea of the appellant cannot be acceded to and moreover, when the appellant has himself accepted that the adjudication order is passed only after service of corrigendum to the Show Cause Notice, the relevance of raising any such objection gets negated.
>
> 7. In the light of the facts of the case, the observation made in the impugned order and the Grounds of Appeal filed by the appellant is becomes clear that neither the

> taxability of the services in question nor the penalty imposed therein has been challenged. The only objection raised by the appellant is that they have made an excess payment towards Service Tax and have already deposited the amount of interest and penalty. I find that in para 19 of the
>
> impugned order, the original authority has though accepted the fact that an amount of Rs. 38,045/- has been deposited by the appellant towards penalty, yet the appropriation of the said amount has not been made. Likewise, there is no mention of the amounts claimed to have been deposited by the appellant. In the given situation becomes incumbent upon the department to ensure that the appellant has given the opportunity to produced the relevant challans so that adjustment of the Service Tax already deposited may bade against the demanded amount. The concerned division/range office-is-accordingly directed to do the needful and make an official communication with the appellant in this regard. Except for the verification, the observation made in the impugned order do not need any intervention.
>
> 8. In view of the foregoing discussions the impugned order is upheld and the appeal filed by the appellant is rejected."

4. A perusal of the above clearly shows that the Commissioner (Appeals) did not remand the matter to the original authority but upheld the order of the original authority. However, he observed that the department must ensure that the appellant is given an opportunity to produce all relevant challans so that the adjustments of service tax already deposited may be made against the demanded amount and further remarked that except for the verification, the order impugned before him (i.e. OIO) did not need any intervention.

5. Learned counsel for the appellant misunderstood this remark in paragraph 7 of the order to mean that the Commissioner (Appeals) remanded the matter to the original authority. Paragraph 8 of the impugned order makes it explicit that the order in original was upheld and the appeal filed by the appellant was rejected by the Commissioner (Appeals).

6. Learned counsel for the appellant also submitted that they are contesting the penalty imposed on the appellant under section 78 of the Finance Act, 1994[3].

7. Learned authorised representative appearing for the Revenue submitted that the appellant had not contested the imposition of penalty before the Commissioner (Appeals) at all and, therefore, no relief was granted was granted nor was the question examined and discussed.

8. A perusal of the order in appeal shows that four grounds were taken before the Commissioner (Appeals). These grounds are reproduced in paragraph 3 of the impugned order as below:

> (A) That the impugned is bad in law because the same was passed after service of corridendum show cause notice dated 01.02.2013 which is barred by the period of limitation and issued after three earlier hearings in respect of the same matter on 10.05.2012, 22.08.2012 and 05.11.2012.
>
> (B) That the show cause notice in respect of the same matter cannot be issued again and again. The Asst. Commissioner of Central Excise, Bhiwadi, Alwar, Rajasthan should have passed his order within 30 days at the most after the first personal hearing dated 10.05.2012.
>
> (C) That even the first show cause notice dated 13.03.2012 is barred by the period of limitation because the period covered by it is from April 2009 to 3rd March 2011 which is beyond done year from the date of show cause notice.
>
> (D) That the impugned order is perverse in nature and contrary to the evidence on records which is bad in law and deserves to be deleted entirely.

9. We have also gone through the Form ST-4 in which the appellant had filed an appeal before the Commissioner (Appeals) and find that only the four grounds of appeal listed above were taken in the appeal.

---

3 the Finance Act

10. Since the penalty imposed under section 78 was not assailed before the Commissioner (Appeals), the Commissioner (Appeals) did not decide anything about this. Therefore, the impugned order is correct and proper on this question.

11. We also note that penalty under section 78 is a mandatory penalty equal to the amount of service tax confirmed under the proviso to sub-section 73 (1) of the Finance Act. It further provides an option to deposit only 25% of the penalty subject to some conditions. The penalty imposed by the Assistant Commissioner in the Order in Original is as per the mandatory provisions of section 78 of the Finance Act. We, therefore, find no error in the Commissioner (Appeals) not dealing with the penalty.

12. Learned counsel for the appellant also submitted that the appellant had deposited the service tax by challan dated 14.11.2011. Learned authorised representative for the revenue submitted that this is not a ground taken before the Commissioner (Appeals).

13. A perusal of the impugned order and the appeal filed before the Commissioner (Appeals) by the appellant in Form-4 shows that the learned authorised representative for the Revenue is correct in her averment. The Commissioner (Appeals), however, also examined this question of deposit of service tax interest. He remarked in paragraph 7 that no mention of the amount claimed and deposited by the appellant was in the order-in-original and, therefore, if the amount had already been deposited and such challans were produced, the service tax already deposited may be adjusted against the demand.

14. Learned counsel for the appellant misunderstood this remark in the impugned order by the Commissioner (Appeals) to mean that the Commissioner (Appeals) has remanded the matter to the original authority. All that the Commissioner (appeals) said in the impugned order is that the order-in-original is upheld and the appeal is rejected. However, if any amount was deposited, it should be adjusted against the demands and that the appellant should be given an opportunity to produce the relevant challans. Learned counsel for the appellant misunderstood these remarks which were in favour of the appellant's claim that it had already deposited service tax through some challans and argued that the Commissioner (Appeals) had wrongly remanded the matter to the original authority.

15. In view of above, we find that impugned order is correct and proper and calls for no interference.

16. The impugned order is upheld and the appeal is dismissed.

[Order pronounced on **29/10/2024**]

(JUSTICE DILIP GUPTA)
PRESIDENT

(P. V. SUBBA RAO)
MEMBER (TECHNICAL)

Tejo