CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH –COURT NO. 4

Service Tax Appeal No. 52337 of 2018

(Arising out of Order-in-Appeal No. IND-EXCUS-000-APP-818-17-18 dated 28.03.2018 passed by the Commissioner (Appeals), Central Goods & Service Tax & Central Excise, Indore)

M/s Kriti Nutrients Limited **Appellant**
47-47-A Industrial Area No. 3, Dewas, Dewas
Madhya Pradesh-455001

Versus

Commissioner (Appeals) CGST & Cx, Indore **Respondent**
Manik Bagh Palace, P.O. No. 16
Indore (M.P.) - 452001

Appearance:

Present for the Appellant: Shri Ashutosh Upadhyay, Advocate

Present for the Respondent: Ms. Jaya Kumari, Authorized Representative

CORAM:

Hon'ble Dr. Rachna Gupta, Member (Judicial)
Hon'ble Ms. Hemambika R. Priya, Member (Technical)

Date of Hearing : 06/12/2024
Date of Decision : 18/12/2024

Final Order No. 59906/2024

Rachna Gupta:

The present appeal has culminated out of the show cause notice No. 226/15-16 dated 31.3.2017. The facts in brief, as apparent from the said show cause notice are that the appellant is registered for providing various taxable services. During the course of audit of appellant's records for the year 2014-2015, it was noticed as follows:

(i) The appellant had paid Rs. 20,000/- to the Directors as sitting fee. Said amount attracts service tax under reverse charge mechanism in terms of Notification No. 30/2012-ST dated 20 June 2012. Further verification revealed that the appellants had paid tax on the amount of Rs. 10,000/- out of the said amount of Rs. 20,000/- under the category of Business Auxiliary Services and have also shown the same in the ST-3 returns. With respect to remaining amount of Rs. 10,000/- the appellant vide their reply dated 31.03.2016 had acknowledged that the remaining amount of Rs. 10,000/- was not included due to oversight. Accordingly, service tax amounting to Rs. 1236/- is proposed to be recovered on this amount.

(ii) The appellant had paid testing, analysis and certification charges to their service provider located outside India for which also appellants were liable to pay service tax under Reverse Charge Mechanism. They have made total payment of Rs.13,73,350/- during 2014-2015. Though the appellant vide their reply dated 26.07.2016, denied their liability to the said amount. However, the service tax of Rs. 1,69,771/- in terms of Rule 2(1)(d)(i) and (G) of Service Tax Rules 1994 was proposed.

(iii) The appellants had shown an amount paid to their advocates for contesting their cases at various forum and had paid the service tax under legal charges/services under reverse charge mechanism. However, the amount of Rs. 2,18,882/- indicated in their ledger against the said head and the one shown in ST-3 returns does not found tally. Hence service tax of Rs. 5020/- on the difference of Rs. 40,617/- was proposed to be recovered.

(iv) The appellant had paid/reimbursed an amount of Rs. 2,37,064/- to its dealer located at Sehore Gwalior for organizing an event. The said event was sponsored by the appellant but the appellant has not discharged the liability of service tax for providing the sponsorship services. Hence service tax of Rs. 29,301/- was proposed to be recovered from the appellant.

2. All the above mentioned service tax amounts for respective observations of audit team were proposed to be recovered from the appellants along with proportionate interest and the appropriate penalties. The said proposal was initially confirmed vide order in original No. 11-17-18 dated 28.08.2017. Appeal against the said order has been rejected vide the order-in-appeal No. 818-17-18 dated 28.03.2018. Being aggrieved, the appellant is before this Tribunal.

3. We have heard Shri Ashutosh Upadhyay, learned Advocate and Ms. Jaya Kumari, learned Authorised Representative for Revenue.

4. Learned counsel for the appellant has mentioned that at the very initial stage of reply to the show cause notice, the appellant had admitted its mistake about not discharging their tax liability on amount of Rs.10,000/- out of the amount of Rs. 20,000/- as was given to the Director as 'Sitting Fee'. Hence the appellant acknowledges the liability of Rs. 1236/-. The service tax of Rs. 1,69,771/- on the amount received for getting testing, analysis and certification to their service providers located outside the taxable territory is submitted to be not sustainable. It is submitted that the appellants were required to send the material to the place of

laboratory in their premises. The laboratory tests the material in their laboratory situated abroad and issued the certificate. Para 5.4.1 of CBEC is relied upon wherein it has been clarified that the goods need to temporarily come into the physical possession or control of the service provider, and without this happening, the service cannot be rendered. Testing, inspection, analysis etc. of goods are well covered under such services. In the present case, goods have not come to the service provider hence service tax has wrongly been demanded from the appellant.

5. Learned counsel further submitted that the demand has with respect to the service tax of Rs. 5020 on legal consultancy services has also been wrongly confirmed. It is mentioned that difference in ST-3 and the ledger is for the reason that Rs. 1,91,865/- was paid for the expenses like notary charges, stamp purchase charges etc. public notary is not working as advocate. Hence the fee paid to notary is not an amount towards legal and consultancy service the same is not liable to be taxed. With respect to demand of service tax vis-à-vis sponsorship services, learned counsel has relied upon the Circular No. 334/1/2010-TRU dated 26.02.2010 which clarifies that promoting a 'brand' of goods, service, events, business entity etc. do not invite the service tax liability.

6. With these submissions, the entire service tax demand along with interest and penalty is prayed to be set aside also on the ground that there is no mala fide/intentional mis-representation or suppression of fact by the appellant. Department could not have produced any evidence to that effect. Thus the show cause notice itself is barred by time due to the said reason. Learned counsel has relied upon the CESTAT decision in the case of **CST, New Delhi**

Vs. Kamal Lalwani - 2017 (49) STR 552 and on the decision in the case of **GAC Shipping (India) Pvt. Ltd. Vs. Commissioner of C. Exc. & Cus, Cochin - 2017 (49) STR 242** on the grounds of limitation. The order under challenge is prayed to be set aside and appeal is prayed to be allowed.

7. While rebutting the submissions of the appellant, learned Departmental Representative has reiterated the discussion and findings in the orders of the adjudicating authority below. It is submitted that the entire argument of appellant is otherwise beyond the scope of present appeal as nothing is mentioned their grounds of appeal where the appellant have only contested service tax on notary charges/stamp expenses etc. without contesting any other part of the demand confirmed.

8. Learned Departmental Representative has relied upon the decision of Hon'ble High court, Karnataka in a bunch matter reported as 2024 (5) TMI 466- Karnataka High Court. With respect to plea of limitation, it is submitted that the liability to pay service tax on notary charges has to be paid under reverse charge mechanism by the recipient. The appellant has intentionally excluded the amount of notary charges and stamp papers from the amount given to the advocates as consultancy fee. This is a sufficient act of suppression. Similarly discharging the liability on 50% of the amount of Director's fee is also an apparent act of suppression mentioning it to be an inadvertent mistake is rather mis-representation of facts. The extended period is, therefore, rightly invoked. The learned Departmental Representative has relied upon the following decisions:

(i) Warsi Buildcon Vs. Principal Commissioner CCE & ST, Indore – (2024) 17 Centax 37 (Tri.-Del,)

(ii) Sikar Ex-Serviceman Welfare Co-Op Society Ltd. Vs. Commr. Of C. Ex. & ST, Jodhpur – 2021 (52) GSTI 75 (Tri.-Del.)

(iii) Magnum International Vs. Commissioner of Cus. & C.Ex., Bhopal – 2008 (11) STR 176 (Tri.-Del.)

The appeal is prayed to be dismissed.

9. Having heard the rival contentions, we observe that the only ground of appeal is about confirmation of demand of service tax on notary charges, stamp expenses etc. under reverse charge and imposition of penalty on the appellant but the other part of the impugned order confirming demand on other aspects is also objected while making submissions before us. Non-consideration of any of those grounds may violate the principle of natural justice hence we take all the issues raised as follows:

(A) The service tax demand vis-à-vis the Director's fee has duly been acknowledged. Hence we need not to dwell into the said adjudication. Resultantly, the order confirming the demand of service tax of Rs. 1236/- stands upheld.

(B) The liability vis-à-vis sponsoring the cookery event but the appellant has relied upon the CBEC letter No. 334/4/2006 dated 28.02.2006 and the such letter No. 334/1/2010-TRU dated 26.02.2010 to deny the said liability. From bare perusal of those circulars, we observe that none of those apply to the facts of present case. Admittedly, the cookery event at Sehore, Gwalior was sponsored by the appellant displaying the appellant's company logo and trading name. The adjudicating authority below have observed that the appellant was given exclusive or priority booking rights. Sponsoring prices/trophy for the competition and all other expenses incurred towards organizing of the said event were borne by the appellant that too that with intent to obtain commercial benefit by bringing their name or product or services in public image to public attention by associating with the said event. No evidence is produced by the appellant to falsify the said observations. The said activity clearly falls under the scope of sponsorship services which invites the service tax liability. Hence we do not find infirmity when this demand of service tax of Rs. 29,301/- has been confirmed against the appellant.

(C) Coming to the demand on account of difference in the amount shown in ledger and one shown in the ST-3 returns that the appellant has submitted that the difference is because of the amount utilized as notary charges and the stamp paper charges but it is an apparent admission that the said amount was paid to the legal consultant only. The amount of consideration paid for receiving legal consultancy services is taxable under reverse charge mechanism and the 100% service tax is to be paid by the service recipient in terms of Entry No. 5 of Notification No. 30/2012-ST dated 20 June 2012. Hence the total amount paid by the appellant to his lawyers is liable to service tax and the liability is to be discharged by the appellant under RCM. There is appellant's own admission that the amount of notary charges and stamp charges also found the part of consultancy fee. Otherwise also the services of notary are also liable to service tax. It is only the purchase of stamp papers that can be excluded but there is no evidence on record bifurcating the said amount from the amount of the legal fee paid by the appellant for obtaining legal consultancy services. Hence we find no reason when this demand of service tax of Rs. 5020/- has also been confirmed against the appellant.

(D) There is one another demand confirmed on testing analysis and certification charges. Apparently testing/analysis has been done in foreign laboratories. As per Rule 4(a) of Place of Provision Rules, 2012 the Place of provision will the place of provider of service. In the present case place of service provider is outside taxable territory whereas appellant is in taxable territory. The plea taken is that the laboratory was existing in appellant's premises but there is no evidence for the same. The service received is otherwise taxable. Hence we hold that the appellant was liable to pay service tax under reverse charge mechanism. Hence the demand of service tax amounting to Rs. 1,69,771/- is also upheld.

10. Coming to the issue of invocation of extended period while issuing the show cause notice as impressed upon by the learned counsel, we have already observed that appellant was aware about his service tax liability to pay service tax on the amount paid by them as Director's fee still the appellant had discharged the liability only with reference to 50% of the said amount of fee. This act is definitely an act of mis-representation, the only possibility is to evade the payment of tax. As discussed above, Notification No. 30/2012 makes the service recipient of legal consultancy service liable to pay service tax on the amount of consultancy fee paid ignorance of law cannot be the defence. Hence the only possible outcome of still not paying the service tax is the intent to evade the tax. The appellant was relying on TRU circulars but those circulars apparently are not extending any exemption to the appellant. The plea of bona fide belief is also not available to the appellant. In view thereof, the case laws relied upon by the appellant are not applicable to the given set of facts and circumstance. Resultantly, we hold that the extended period of limitation has rightly been invoked.

11. In the light of discussion above, no infirmity has been found in the order under challenge while confirming the impugned demand of service tax. The impugned order in appeal is, therefore, upheld. Consequent thereto, the appeal is hereby dismissed.

(Pronounced in open Court on 18/12/2024)

(Dr. Rachna Gupta)
Member (Judicial)

(Hemambika R. Priya)
Member (Technical)

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