IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing/Order: 15.6.2018

Appeal No. ST/50027/2017-SM

(Arising out of Order-in-Appeal No. 362/OPD/ST/JPR-II/2013 dated 31.12.2013 passed by the Commissioner (Appeals), Customs & Central Excise, Jaipur)

M/s Blackstone Rubber Industries Pvt. Ltd. Appellant

Vs.

CCE, Jaipur-II Respondent

Appearance

Adj. request - for the appellant

Shri K. Poddar, DR - for the respondent

CORAM: Hon'ble Mrs. Archana Wadhwa, Member (Judicial)

Final Order No. 52466/2018

Per Archana Wadhwa:

After rejecting the request for adjournment, I proceed to decide the appeal itself inasmuch as issue lies in a narrow compass. Accordingly, I have heard Shri K. Poddar, ld. AR and have gone through the impugned order.

2. The appellants is recipient of GTA services and as per law was liable to pay service tax on the same on reverse charge basis. During the scrutiny of their records, it transpired that though they have paid

service tax on the GTA services so received by them but in respect of certain consignments, no service tax was paid.

3. Accordingly, proceedings were initiated against them by way of issuance of a show cause notice dated 21.8.2009 proposing to confirm the service tax to the tune of Rs. 44,061/- for the period 2004-2005 to 2008-2009. The same was confirmed by the original adjudicating authority as also by Commissioner (Appeals). When the matter reached the Tribunal, the same was remanded vide Final Order No. 478/2012-SM (BR) dated 23.4.2012, by appreciating the assessee's plea that they have all the documents to establish that the service tax was paid by them to the transporters, who had deposited the same. Matter was remanded for verification of the said factual position. As the demand was also challenged on the point of time bar, the plea of limitation was kept open for the appellant to contest the same before the lower authorities.

4. In de novo proceedings, the demand was again confirmed by observing that the appellants have not been able to establish beyond doubt that the transporters have actually deposited the amount in question to the exchequer. However, while confirming the demand, the limitation plea was not dealt with either by the original adjudicating authority or by Commissioner (Appeals), though the same was raised before them. Hence the present appeal.

5. It is not in dispute that the appellant was discharging his service tax liability in respect of GTA services so received by them. It is only in a few cases that the appellant had taken a categorical stand that the service tax was paid by them to the transporter, who actually deposited the same. For verification of the above plea of the assessee, the matter was remanded to the original adjudicating authority. However, it seems that the appellant could not establish, by production of challans etc. that the transporters have actually deposited the amount with the exchequer or not, though they have taken a categorical stand and have also relied upon the fact that the service tax was paid by them to the transporters. Transporters have also produced affidavits to state that *"whatever service tax has been collected"* has been deposited in the Government account. This fact has not been considered to be sufficient by the lower authorities as the same does not give the details of the various consignments or the facts of deposit.

6. When the appellant had pleaded before Tribunal that they have documentary evidence to show that the transporters have deposited the service tax with the Government and when by appreciating the said plea of the assessee, the matter was remanded for verification of such documents, it was obligatory on the part of

the assessee to produce such documents. Having failed to do so, the lower authorities have rightly confirmed the demand on merits.

However, I find that the demand stands raised by invoking the longer period of limitation. On going through the show cause notice, I find that proviso to Section 73 has not been invoked by the Revenue. Further, there is no allegation or evidence to show that such non-payment of service tax was with an intent to evade payment of duty. The appellants have assailed the impugned demand on the plea of limitation by submitting that in the absence of any evidence to establish mala fide intention on the part of the assessee, extended period cannot be invoked and penalty cannot be imposed. For the above proposition, they have relied upon the Tribunal's decision in the case of ***Ex-Services Security Cooperative Society Ltd. Vs. CCE-*** 2008 (86) RLT 961 (T) as also in the case of ***Dalveer Singh Vs. CCE, Jaipur-*** 2008 (84) RLT 555 (T). As already observed, the show cause notice has not invoked proviso to Section 73 of the Act, which provides for invocation of longer period of limitation. Further, I find that no evidence stands produced by the Revenue to reflect upon any mala fide of the assessee. When the appellant was paying service tax on reverse charge basis in respect of all the GTA services so received by them, there could not be no mala fide intention on their part to evade payment of duty of Rs. 44,000/- in a span of five years. On that ground as also by appreciating the appellant's stand that they have paid the service amount to the transporters, I hold that the extended period of limitation would not be invocable against them. For the same reasons they are not liable to penalty.

7. Inasmuch as the extended period of limitation has been held to be not available to the Revenue, they are within their rights to quantify the demand falling within the limitation period. For the said purpose, the matter is remanded to the original adjudicating authority for quantification of the demand.

8. Appeal is disposed of in above terms.

(Dictated & pronounced in open Court)

(Archana Wadhwa)
Member (Judicial)

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