

IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL,
WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-SM

COURT -IV

Service Tax Appeal No.ST/53071/2018-ST [SM]

[Arising out of Order-in-Appeal OIA-BHO-EXCUS-001-APP-071-18-19 dated 27/04/2018 passed by the COMMISSIONER OF CGST & CENTRAL EXCISE-BHOPAL(Appeal)]

Namtel Technologies Pvt. Ltd. ...Appellant

Vs.

CGST, CE & CC. Bhopal ... Respondent

Present for the Appellant : Mr.Pradeep Mutreja, CA
Present for the Respondent: Ms. Tamanna Alam, D.R.

Coram: HON'BLE MRS. RACHNA GUPTA, MEMBER (JUDICIAL)

Date of Hearing/Decision: 04/12/2018

Final ORDER NO. 53415 /2018

PER: RACHNA GUPTA

The appellant herein is engaged in providing taxable services as that of erection, commissioning and installation services and the works contract service. During the scrutiny of ST-3 Return of the appellants for the period July, 2012 to March, 2014, the Department observed a short payment of tax on the total value as declared by the appellant. Resultantly, vide show cause notice bearing No.7769 dated 25.09.2014, service tax amounting to Rs.19,90,256/- allegedly short paid

for the above mentioned period was proposed to be recovered alongwith the cenvat credit amount of Rs.54,192/-allegedly availed wrongly alongwith the interest at the appropriate rate and the proportionate penalty. The said proposed recovery was confirmed vide the order of Additional Commissioner bearing No. 06 dated 28th February, 2018. Being aggrieved an appeal was preferred before Commissioner (Appeals), who vide the order under challenge bearing No.787 dated 27.04.2018 has upheld the Order in Original. Being aggrieved, the appellant is before this Tribunal.

2. I have heard Mr. Pradeep CA for the appellant and Ms. Tamanna Alam, Id. D.R. for the Department.

3. It is submitted on behalf of the appellant that most of the work of the appellant is being out-sourced including the accountancy work. It is submitted that during the impugned period, there was change in rate of duties and the procedure of submitting annual returns was changed with the mandate of submitting half yearly returns for which the software was not instantly prepared. It is submitted that the alleged short-coming occurred due to the error committed on account of the failure of the software but was not at all intentional on part of the appellant. It is submitted that the ST-3 Returns were timely been filed (half yearly returns) reflecting all the details as that of showing the details of opening balance, taxable value, tax paid and the availment and utilization of credit. In addition, at the time of personal hearing, the calculation chart

alongwith those returns were provided to the Department. However, the Adjudicating authority below have not considered the same. It is finally impressed upon that while undoing the software issue at their own level, the appellant noticed a short payment of Rs.56,070/- which was also paid by him vide challan dated 5th October, 2013. The order under challenge is therefore prayed to be set aside.

4. While rebutting these arguments, Id. A.R. has submitted that no document was provided by the appellant before the adjudicating authorities below, despite that appellant was afforded due opportunity of personal hearing. Para 9 of the order is being impressed upon while justifying the order. Appeal is accordingly, prayed to be dismissed.

5. After hearing both the parties, I observe that the Department noticed the short payment on the total taxable value as declared by the appellant and also noticed that the cenvat credit in excess has been availed by the appellant. To my opinion this issue relates to examination of documents and thereafter to correlate as to whether there was any short payment of service tax during the impugned period w.e.f. July, 2012 to March, 2014 and as to whether the excess cenvat credit of Rs.54,192/- has been availed by the appellant during the said period. I further observe that there is no denial on part of the Department to the effect that the system of submitting return had a major change requiring the assessee to file the half yearly returns instead of the annual returns

w.e.f. the year 2012. There is also no apparent denial of rebutting the failure in the software of the appellant as is mentioned by them.

6. The perusal of order under challenge reflects that the demand as proposed in show cause notice has been confirmed only for want of the documents/ documentary proof and on the presumption that had there been error in filing ST 3 returns as per the plea of the appellant, the same would have been reflected online itself. However, the perusal of record even the order under challenge shows that the documents not only in the form of ST 3 returns but the calculation chart as well were produced before the adjudicating authorities below. These returns include the half yearly returns for the financial years under question. Perusal of these returns shows that the opening balance for the first half yearly return is same as that of second half yearly return. This perusal is sufficient to hold that the software has not appropriately picked up the value of opening balance. This perusal also makes it clear that there is no intentional act on the part of the appellant to evade the duty.

7. It further has been clarified by the appellant that when this error came to their notice they *suo moto* assessed their accounts and whatever short payment of duty i.e. for an amount of Rs.56,017/- was *suo moto* deposited way back in the year 2013. The authorities below are silent qua this deposit as well. The record also bear another document in the

form of the certificate from the Chartered Accountant of the appellant to certify that service tax returns of the appellant were prepared by them on the software developed, prepared and designed by M/s. MDA Software Ltd. It is certified therein clearly that due to certain glitches, not noticed earlier, the input credit availed during the relevant period were not shown in the ST-3 returns as utilized towards discharging of output Service Tax liability for the impugned period, which resulted in the anomalous situation of large credit balances simultaneous on the un-availed Service Tax liability. The detail of Service Tax credit and the payments were also submitted with due endorsements alongwith the said certificate. It is an error apparent on the part of the adjudicating authority to ignore the relevant documents and dismissing the contention of the appellant without specifying the provisions, while confirming wrong availment of credit which otherwise stands proved to support the appellant's contention.

8. In view of the above findings, the order under challenge is hereby set aside. Appeal is accordingly allowed. Consequential benefit if any to follow.

[Dictated and pronounced in the Open Court]

(RACHNA GUPTA)
MEMBER (JUDICIAL)

Anita