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

BENCH-DB

COURT - IV

Service Tax Appeal No. ST/55650/2014 [DB]

[Arising out of Order-in-Original No. JAI-EXCUS-001-COM-25-14-15 dated 12.08.2014 passed by the Commissioner, Central Excise, Jaipur–I]

Kandlap Tradelinks and Services Pvt Ltd ...Appellant
Vs.
C.C.E. & S.T., Jaipur – I ... Respondent

Present for the Appellant : Mr. Mudit Jain, CA
Present for the Respondent: Mr. R.K. Majhi, DR

Coram: HON'BLE MR. V.PADMANABHAN, MEMBER (TECHNICAL)
HON'BLE MRS. RACHNA GUPTA, MEMBER (JUDICIAL)

Date of Hearing: 04.02.2019
Pronounced on : 06.02.2019

FINAL ORDER NO. 50180/2019

PER: V. Padmanabhan

The present Appeal is against the Order-in-Original No. JAI-EXCUS-001-COM-25-14-15 dated 08.08.2014. The period of dispute is October 2007 to June 2012. The appellant was engaged in providing various services including :

a) Clearing and forwarding agent services under Section 65(25) of the Finance Act, 1994
b) Cargo handling service under Section 65(23) ibid

c) Goods transport agency service under Section 65(50b) as well as storage and warehousing services falling under Section 65(102) ibid.

2. The Department undertook audit of the records of the assesse in June 2013. It was noticed that the appellant had not filed the periodic ST-3 returns for the period October 2008 to June 2012. Further, scrutiny of the records reveal that the appellant had not discharged service tax liability for the period in full. Accordingly, the SCN was issued to remand the unpaid S.T. SCN also included a proposal for imposing penalty under various Sections of the Finance Act, 1994. The Adjudicating authority, after conclusion of the adjudication process issued the impugned order in which he upheld the liability for payment of service tax as proposed in the SCN. He recorded that out of the service tax amount demand of Rs. 51,62,111/- an amount of Rs. 47,38,000/- was already paid by the appellant. The above amount included the service tax paid by the appellant before issue of SCN. The adjudicating authority further imposed penalties under Section 76, 77 and 78 of the Finance Act, 1994. This Order is under challenge in the present Appeal.

3. In this connection, heard Shri Mudit Jain, Ld. CA for the appellant and Shri R.K. Majhi, Ld. DR for the Department.

4. The submissions of the Ld. CA are summarized below:

(i) it was submitted that the total service tax liability alongwith interest already stands paid. He submitted that even though the full amount of tax stands paid by the appellant even before SCN the adjudicating authority has recorded that only an amount of Rs. 47.38 Lakhs was paid out of the total demand of Rs. 51.62 lakhs.

He submitted that the adjudicating authority did not record correctly total service tax amount paid on account of certain clerical mistakes in the Challans submitted before him.

(ii) the Ld. CA further submitted that the entire service tax liability stands admitted by the appellant. The interest amount payable on account of delayed payment of service tax has also been paid in full by the appellant. However, he admitted that a part of interest liability was paid by the appellant after the issue of SCN but before the issue of the Order-in-Original.

(iii) the Ld. CA contended that the appellant cannot be held liable for the allegation of suppression of facts in as much as all the transactions stand recorded in the books of account of the appellant and only on scrutiny of such record, the Departmental officers noticed the delayed payments / non payment of service tax. As such, he submitted that the appellant will be entitled to the benefit of the provisos included in Section 78 w.e.f. 14.05.2015.

(iv) He prayed that in the absence of any suppression on the part of the appellant, the adjudicating authority was not justified in imposing penalty under Section 78. In this connection, he relied upon the following case laws:

(a) Blackstone Polymers Vs. C.C.E., Jaipur – II 2014 (301) E.L.T. 657 (Tri. – Del.)

(b) Hindalco Industries Ltd. Vs. C.C.E., Allahabad 2003 (161) E.L.T. 346 (Tri. – Del.)

5. The Ld. DR justified the impugned order. He submitted that the adjudicating authority has recorded detailed findings of the fact that the appellant had recovered the service tax from their customers but at the same time, did not deposit such service tax

collected, to the Government account. He argued that this accounted to suppression of facts.

(i) Ld. DR further submitted that adjudicating authority has discussed the claim of the appellant that the transactions were recorded in their balance sheet which was a public document. He submitted that the adjudicating authority has declined the plea of the appellant that the balance sheet is a public document and as such he submitted that the plea of suppression is required to be upheld against the appellant.

(ii) He also submitted that the case law relied upon by the appellant was not relevant to the facts of the present case in which the service tax stands collected already by the appellant but not paid to the Government.

6. Heard both sides and perused the record.

7. The appellant, during the period of dispute has provided various services, viz. clearing of agent, cargo handling service, GTA and storage and warehousing service. Department officers, during the course of audit, noticed that the appellant had failed to discharge the total service tax liability in full for the period October 2007 to June 2012. But the entire service tax liability alleged in the SCN now stands admitted by the appellant. Further it is seen that the entire service tax liability has also been paid by the appellant through challans. The adjudicating authority has however recorded that out of the total liability of Rs. 51.62 lakhs, the appellant had paid only an amount aggregating to Rs. 47.38 lakhs. In this connection, it has been submitted on behalf of appellant that the balance tax also was paid but the same has not been given credit by the adjudicating authority on account of certain wrong challan Nos.

provided to the adjudicating authority. The chart showing the dates of payment as well as details of the challans have been produced before us and on scrutiny of the same, it *prima facie* appears that the entire tax has been paid; however we direct the adjudicating authority to verify the relevant challans and convince themselves of the same.

7. The interest liability has also been discharged in full by the appellant. After perusing the details of payment of interest, it appears that considerable chunk of the interest liability has been paid prior to the issue of SCN. But a part of the interest liability has been discharged after issue of SCN but before the issue of the Order-in-Original dated 08.08.2014. In this scenario we proceed to evaluate the liability for payment of penalty under various Sections.

8. The various transactions of the appellant leading to the service tax demand were admittedly recorded in the books of accounts. In fact the facts of the case reveal that the Departmental officers noticed such non-payment of service tax only upon perusal of the books of accounts. As such it is sufficient to record that the details related to transaction were recorded in the specified records of the appellant. But it is seen that the service tax dues were not discharged in full, in time by the appellant. Further, the relevant ST-3 returns were also not filed. The appellant has argued that the mere irregularity in not depositing service tax cannot be termed as suppression of facts by the appellant. The non filing of returns, it is submitted, was not a deliberate attempt to evade tax or suppress the information. It is further submitted that the non payment of service tax at the relevant time was on account of the fact that the appellant did not receive the funds and the amount of service tax

from their clients. In the above factual matrix, we are of the view that no malafide intention can be attributed to the appellant. The bonafide nature of the appellant is evident from the fact that the entire amount of service tax alongwith applicable interest stands paid by the appellant even before the impugned Order of adjudication was received by them.

9. The Section 80 of the Finance Act, 1994 (which was part of the statute at the relevant time) provides for waiver of the penalty. In the facts and circumstances of the present case we consider it appropriate to waive the penalties imposed under Section 76, 77 and 78 of the Finance Act, 1994 by taking recourse to Section 80. However, we uphold the demand for payment of service tax alongwith interest and order appropriation of the ST paid. We further uphold the Order for payment of late fees in respect of 10 ST-3 returns filed after due date under Section 70 of the Finance Act, 1994.

10. In view of the above discussions, the Appeal is partly allowed.

[Pronounced in the open Court on 06.02.2019]

(RACHNA GUPTA)
MEMBER (JUDICIAL)

(V.PADMANABHAN)
MEMBER (TECHNICAL)

D.J.