

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/52694/2018 [SM]

[Arising out of Order-in-Appeal No. 475 (CRM)/ST/JDR/2018 dated 23.05.2018 passed by the Commissioner(Appeals), CGST & Central Excise, Jodhpur]

Kuldeep Kasnia

...Appellant

Vs.

C.G.S.T. & C.C.E., Jodhpur-I

...Respondent

Present for the Appellant : None

Present for the Respondent: Mr. P.R. Gupta, DR

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

Date of Hearing/Decision: 06.02.2019

FINAL ORDER No. 50224/2019

PER: RACHNA GUPTA

None is present for the appellant. Perusal of file shows that previously also, despite the service of the notice, none appeared for the appellant. However, keeping in view the directions of Hon'ble Supreme Court in the case of **Balaji Steel RE-Rolling Mills Vs. C.C.E., Customs 2014 (310) E.L.T.** 209. I hereby proceed to dispose of the Appeal on merits.

2. It is submitted on behalf of the Department that the appellant was providing services of Renting of Immovable Property but neither got himself registered nor was filing the ST-3 returns. It is only after an information was received from the Income Tax Department that the scrutiny of the records of appellant was conducted and the aforesaid contravention was noticed by the Department. Observing the same a SCN No. 780 dated 18.04.2016 was served upon the appellant proposing the recovery of service tax for an amount of Rs. 8,39,239/- alongwith the appropriation of the amount already

deposited by the appellant. The interest at the appropriate rate and the proportionate penalties were also proposed vide the said SCN.

The said proposal was confirmed vide the Order-in-Original No. 01 dated 20.01.2017 however the original adjudicating authority had requantified the taxable value for the year 2010-11. After giving threshold exemption under Notification No. 06/2005 ST 13-2005 as amended by Notification No. 33/ 2012-ST dated 20.06.2012. Being aggrieved an Appeal was filed. Vide the Order under challenge i.e. the one bearing No. 475 dated 23.05.2018, the order was upheld except that the cum-tax benefit was given to the appellant on the amount received by them from their tenant with the direction of requantifying the said amount alongwith the interest. Being aggrieved the present Appeal was filed.

The repeated absence of the appellant is sufficient to hold that he is not interested in pursuing the matter. Otherwise also, it is apparent that there is no denial on part of the appellant for rendering the service of Renting of Immovable Property. It is also an apparent admission that the returns were not being filed by the appellant for the period w.e.f. October 2010 till September 2015. Despite rendering a taxable service and receiving the amount in lieu thereof, the non filing of ST-3 Returns is a definite violation of Section 68(1) of Finance Act, 1994 read with Rule 7 of Service Tax Rules. No infirmity therefore is opined in the Order of the adjudicating authority below, as far as the confirmation of the said demand is concerned and the appropriation of the amount as stands already deposited by the appellant.

The only grievance of the appellant appears to be against the penalty imposed but it is observed from the Order under challenge that the appellant had not responded to several notices given to the appellant by the Department to provide the requisite information.

For a long period of more than five years, the appellant was not discharging the tax liability despite rendering the taxable service and receiving the consideration in lieu thereof. Had there been no information received by the Department from the Income Tax Department and had there been no scrutiny of the documents of the appellants by the Department, the above noticed contravention on the part of the appellant which continued over a period of 5 years could not be unearthed.

3. I am therefore of the opinion that the adjudicating authority has not committed any error while holding that the non-payment of service tax by the appellant and non filing of the service tax returns was only with the intention to evade the payment. Accordingly, I do not find any infirmity in the Order, as far as the imposition of penalty is concerned. Order accordingly stands upheld and Appeal is hereby dismissed.

[Dictated and pronounced in the open Court]

(RACHNA GUPTA)
MEMBER (JUDICIAL)

D.J.