CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Service Tax Appeal No. 55115 of 2014 [DB]

[Arising out of Order-in-Appeal No. BPL-EXCUS-000-APP-025-14-15 dated 07/05/2014 passed by the Commissioner(Appeals), Service Tax, Bhopal]

M/s Pushpa Food and Processing Pvt. Ltd. ...Appellant

Vs.

Commissioner of Customs, Central Excise & Service Tax, Bhopal ...Respondent

WITH

Service Tax Appeal No. 55374 of 2014 [DB]

[Arising out of Order-in-Appeal No. BPL-EXCUS-000-APP-001-14-15 dated 09/04/2014 passed by the Commissioner(Appeals), Service Tax, Bhopal]

M/s Pushpa Food and Processing Pvt. Ltd. ...Appellant

Vs.

Commissioner of Customs, Central Excise & Service Tax, Bhopal ...Respondent

APPEARANCE:

Shri Sanjay Kumar Tiwari, CA for the Appellant
Shri G.R. Singh, Authorised Representative for the Respondent

Coram: HON'BLE MRS. ARCHANA WADHWA, MEMBER (JUDICIAL)
HON'BLE MR. BIJAY KUMAR, MEMBER (TECHNICAL)

FINAL ORDER No. 50465-50466/2019

DATE OF HEARING/ DECISION : 27.03.2019

ARCHANA WADHWA

Both the Appeals are disposed of by a common Order as they are arising out of the same set of facts and circumstances.

2. Appellant is providing different services like 'Mandap Keeper Service', 'Rent-a-Cab Service' and 'Renting of Immovable Property Services. Their premises were visited by the officers on 07.03.2011

who conducted various checks and verifications. It was found that the appellant had crossed the threshold exemption limit in as much as 'Mandap Keeper Services' were not being taken into consideration by them for the purpose of payment of service tax. Statement of the Director was recorded wherein he admitted that they were providing 'Mandap Keeper Service' and were receiving consideration of the same without raising the bills. On the above basis, proceedings were initiated against them by way of issuance of a show cause notice dated 16.04.2012 raising demand of duty of service tax of Rs. 4.41 Lakhs approximately. It is seen that during adjudication, the appellant did not file any reply nor attended any hearing afforded by the original Adjudicating Authority. In fact their advocate appeared and assured that he will deposit service tax liability and produce the challans. It is seen that the appellant did not challenge the facts and merits of his tax liability.

3. On the above basis, the Deputy Commissioner confirmed the service tax of Rs. 4,41,044/- alongwith confirmation of interest and imposed penalty under provisions of Section 76 as also under Section 77. No penalty was imposed under Section 78 of the Act.

4. The said Order of the Deputy Commissioner was appealed against by the appellant as also by the Revenue. Commissioner(Appeals) rejected the assessee's Appeal by observing that they have not contested the demand and have accepted that they were liable to pay service tax. By a separate Order, the Appellate Authority also allowed the Revenue's Appeal

and imposed penalty of identical amount under Section 78 of the Finance Act. Hence, the present two Appeals by the assessee.

5. Learned Advocate appearing for the appellant has challenged the impugned orders by submitting that the 'Mandap Keeper Services' being provided from their premises were actually not being provided by them and they had rented out the said premises to a third person, who was running the said 'Mandap Keeper Service'. On being queried, he has not been able to tell the name of the person to whom the said premises were rented out. He has also not been able to show from the statement of the Director that the said premises were not being run by the assessee but were rented by them to a third person. However, he has tried vaguely to establish that they were receiving the rental income which indicates that the said Mandap was rented out by them. On being questioned that the appellant have accepted their tax liability before the original as also before the Appellate Authority, the learned Advocate submits that in as much as they were not afforded with an effective opportunity to put their defence on record, the said recording by the lower authorities is factually incorrect.

6. Countering the arguments learned Authorised Representative submits that undisputedly the appellants have not contested the service tax either before the original Adjudicating Authority or before Appellate Authority. As regards the assessee's plea that the said Mandap was rented out by them, he submits that this is a plea relatable to factual position and cannot be permitted to be raised at

the second Appeal stage. He accordingly prays for rejecting both the Appeals.

7. After carefully considering the submissions made by both the sides and after going through the impugned orders, we note that undisputedly, the appellant never brought the fact of renting of Mandap to a third person. On the contrary, before both the authorities below, they accepted their tax liability and only sought some time to deposit the same, which, in fact, was also deposited by them. Even at this stage, the appellants have not been able to show *prima facie* also that the Mandap in question was leased out by them to a third person. On specifically being asked, learned advocate has not been able to disclose the name of the third person to whom the said Mandap was rented. Apart from that, this being a factual position, cannot be allowed to be raised at the second Appeal stage, as rightly contented by the learned Authorised Representative. We find no reason to interfere in the impugned Orders. Accordingly, we do not find any merit in the assessee's plea on setting aside of penalties in as much as admittedly it is a case of clandestine activity and not a case of any legal interpretation of provisions. The appellant was admittedly providing 'Mandap Keeper Services' and was receiving the consideration for the same without payment of any service tax.

8. In view of entire above discussion, both the Appeals are rejected.

[Dictated and pronounced in the open Court]

(ARCHANA WADHWA)
MEMBER(JUDICIAL)

(BIJAY KUMAR)
MEMBER(TECHNICAL)

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