CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL HYDERABAD

REGIONAL BENCH - COURT NO. – I

Service Tax Appeal No. 1883 of 2011
(Arising out of **Order-in-Original** No.23/2011-Adjn.(Commr)ST, dated 28.03.2011 passed by Commissioner of Customs & Central Excise, Hyderabad)

Choice Precitech India Pvt Ltd., .. **APPELLANT**
Plot No. 216 & 217,
Padma Nagar Colony,
Phase-II, HMT Township (Post),
Hyderabad,
Telangana – 500 054.

VERSUS

Commissioner of Central Tax, .. **RESPONDENT**
Central Excise & ServiceTax
Medchal - GST
Tilak Road,
Ramkoti, Hyderabad,
Telangana – 500 001.

APPEARANCE:
Shri G. Prahlad, Advocate for the Appellant.
Shri S. Hanuma Prasad, Authorised Representative for the Respondent.

CORAM: HON'BLE Mr. R.MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE Mr. A.K. JYOTISHI, MEMBER (TECHNICAL)

FINAL ORDER No. A/30139/2023

Date of Hearing:31.05.2023
Date of Decision:31.05.2023

[ORDER PER: R.MURALIDHAR]

The Appellant is undertaking job work for various Hydraulic Equipment manufacturers. They had taken a view that they are not liable to pay any Service Tax under Business Auxiliary Services (BAS) since the job work goods are ultimately used in the manufacture of dutiable finished goods. The Department during their audit, found that inspite of their claim that their activity does not call for payment of Service Tax, in fact they have collected Service Tax of Rs. 25,59,783/- during the period 2004-05 to 2007-08. After this was pointed out by the audit team, the Appellant paid the quantified amount of Rs. 25,59,783/- along with interest of Rs.6,00,148/-. The Department issued Show Cause Notice on 28.10.2009 for the period 2004-05 to 2008-09 by invoking the extended period provisions wherein going by the details provided by them in their Profit & Loss Account visa-a-vis ST-3 Returns, the demand was quantified to Rs. 1,23,90,009/-. After taking into account that the Appellant has paid Rs. 41,19,392/-. The balance payment was quantified of Rs. 1,32,70,617/-. The Appellant submitted before the Adjudicating Authority that the job work was undertaken on behalf of manufacturers who were paying Excise Duty for the finished goods manufactured by them. If such finished goods manufactured by them were subsequently used in the manufacture of tractors wherein the excise duty was nil, the Appellant may not denied benefit of exemption available to the job workers. The Adjudicating Authority has also justified the invoking of extended period by taking a stand that in the absence of any proper documentary evidence available, the Department has relied on the Profit & Loss Account to quantify the demand. He confirmed the duty demand of Rs. 1,32,70,617/- along with interest and imposed penalties under Section 76, 77 and 78. Being aggrieved by the impugned Order-in-Appeal the Appellants are before the Tribunal.

2. The Learned Counsel on behalf of the Appellant submits that even after holding that job work carried out by them is for the manufacturers who were paying Excise Duty, the Adjudicating Authority is in error in confirming the entire demand. He also submits that amount of Rs. 27,91,143/- paid by them on 15.10.2008 has not been considered either in the Show Cause Notice or in the Order-in-Original inspite of these facts being brought to the notice of Adjudicating Authority. Therefore, he prays that the present appeal may be allowed on merits.

3. Learned AR submits that the Appellant even after claiming that they were exempted from the payment of Service Tax, they were actually collecting amounts from their clients. This has come to the notice of the Department only due to the audit undertaken. After this was pointed out, the Appellant has paid the same along with interest. The amount quantified by audit is purely based on the preliminary assessment of the audit and the Appellant cannot take the stand that the finally quantified amount of Rs. 1,32,70,617/- is not correct, just because of the fact that audit has initially quantified the sum of Rs. 25,15,783/-. The Department has clearly established that the turnover shown in the Profit & Loss Account and in the ST-3 returns were different and accordingly the demand was correctly quantified at Rs. 1,32,17,617/- after taking the amount of Rs. 41,19,392/- paid by the Appellant in the normal course. He reiterates the findings of the Adjudicating Authority and prays the appeal may be dismissed.

4. Heard both sides.

5. It is seen from the impugned Order-in-Original that the Adjudicating Authority has gone into considerable details in respect of the facts and figures produced before him. The relevant portion of his findings are given below:

> *Another contention put forth by the assesses is that demand cannot be raised on the basis of balance sheet and to be specific on the strength of P&L account. However, this sounds to be ridiculous. The assessees themselves admit that P&L account is a public document. The contents thereof are supposed to be authentic. The P&L account is prepared on the basis of documentary evidence for each and every rupee of the income earned or expenditure incurred. It is duly certified by a qualified Chartered Accountant and counter-signed by the Director or authorized signatory of the company concerned. As such, it has an authority of law. Thus, I am at a loss to understand as to how and why such a document cannot be treated as authentic. <u>Instead, the assessees should have attempted to prove as to how the actual figures differ from the P&L account or in other words, how the P&L figures cannot be taken as basis for raising the demand. The job work income shown under this head obviously refers to the job work undertaken by them, of which none amounts to manufacture, which indicates that the entire amount is covered by the Notification. Consequently, as per their own admission, they have collected Service Tax on the said amount, which they have failed to render to the Government account.</u> If they have collected any amount less than the demand, the assessees should have proved the same, which they have failed to do. They should have submitted the list of party-wise ledger account with copies thereof, duly certified by the Chartered Accountant to substantiate their claim that they have actually collected the amount claimed by them i.e. Rs.54,36,628/- instead of Rs. 1,32,70,617/- (after allowing for the amount deposited) as alleged in the notice.[emphasis supplied]*

6. From the findings of the Adjudicating Authority, it is seen that the Appellant has not brought in proper documentary evidence towards their claim that the quantified amount of Rs. 1,32,17,617/- is not correct. Further, when the Appellant claims that they have paid Rs. 27,91,144/- on 15.10.2008, there is no finding in the Order-in-Original as to why this amount has not been considered while passing the Order.

7. Therefore, we deem it fit to remand the matter to the Adjudicating Authority. The Appellant is required to submit the complete details of invoice-wise statement for the period under dispute along with copies of the invoices to substantiate their claims towards requantification. The amounts paid by them under various challans should be submitted to the Adjudicating Authority. These figures should certified by Chartered Accountant clearly

indicating the total turnover as per Profit & Loss Account and turnover shown in ST-3 returns, amount collected by them on account of Service Tax etc. Even the matter of GAR Challan dated 15.10.2008 for Rs. 27,11,144/- claimed by the Appellant which was not being considered as paid, to be verified and allowed if found to be correct.

8. The Adjudicating Authority will follow the principles of natural justice and allow all these documents to be placed before him and he will pass a considered decision after getting these facts verified. Since the matter pertains to the year 2004-05 to 2008-09 Adjudicating Authority is directed to complete the proceedings within 4 months of date of receipt of this communication.

(Order dictated and pronounced in open court)

(R. MURALIDHAR)
MEMBER (JUDICIAL)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

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