IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH: KOLKATA

Appeal No. ST/76823/16

(Arising out of Order-in-Appeal No. 122/ST-II/KOL/16-17 dated 09/08/2016 passed by the Commissioner of Central Excise (Appeals-II), Kolkata.

M/s. Star Security Services

Applicant (s)/Appellant (s)

Vs.

Commissioner of Service Tax-II, Kolkata

<u>Appearance:</u>
None for the Appellant (s)
Shri A. K. Biswas, Suptd. (A. R.) for the Revenue (s)

CORAM:
HON'BLE SHRI P.K.CHOUDHARY, MEMBER (JUDICIAL)

Date of Hearing: -12.04.2018

ORDER NO. F/76470/2018

PER SHRI P.K.CHOUDHARY

When the case was called, none appeared on behalf of the appellants. However, I find from the record that Shri Sanjay Bhowmik, Advocate had appeared on 23/03/2018 and had filed a compilation of documents. The case was adjourned to 26/03/2018. The Ld. Advocate appeared on 26/03/2018 and filed a Brief Note of submissions on behalf of the appellants and argued the matter at length. Thereafter, the case was adjourned to 12/04/2018 i.e today for hearing the submissions of the Ld. DR for Revenue.

2. The facts of the case in brief are that the appellant is engaged in the business of providing Security Agency Service since 2002. A Show Cause Notice dated 17/10/2007 was issued for recovery of Service Tax

which was not paid/short paid along with interest for imposition of penalties. The Adjudicating Authority confirmed the demand of Rs.20,83,885/- along with interest and also imposed equal amount of penalty under Section 78 of the Finance Act 1994. However, the appellants had deposited of Rs.8,00000/- which was appropriated by the Adjudicating Authority during investigation proceedings. On Appeal, the Commissioner (Appeals) upheld the Adjudication Order and rejected the appeal filed by the assessee. Hence the present appeal before the Tribunal.

3. It is the case of the appellant that after passing of the Adjudication Order, they have paid the entire balance demand of Rs. 20,83,855/- and have also paid Rs.50,000/- on account of interest.

4. I find that the appellants have filed photocopy of all the ST-3 returns and GR-7 challans. The Ld. Advocate submitted that the Managing Partner of the appellant firm, Mr. Pranab Das, was suffering from cancer and could not recover and eventually died on 26/07/2012. The Ld. Advocate further submitted that even after his death inspite of severe financial crunch, spouse of the deceased partner stepped into issue and continue to deposit the outstanding demand and ultimately on 01/01/2015 was able to clear the dues.

5. The Ld. Advocate strongly argued that the appellant had no intention to evade payment of Service Tax and was not the bonafide belief that since he has not collected the Service Tax from his client/customer there is no liability on his part to deposit the Service Tax. As soon as the appellant was made aware of his liability towards Service, he immediately paid Rs.8,00000/- which has also been

appropriated by the Adjudicating Authority in Adjudication Order and have now paid the entire tax as demanded in the Adjudication Order.

6. Heard both sides and perused the appeal records.

7. I find that the appellants have now paid the entire amount of Service Tax demanded by the Adjudication Order and have also paid Rs.50,000/- towards their interest liability. I do not find any material on record to establish any fraud or collusion or willful mis-statement or suppression of facts or contravention of any of the provisions of Chapter 5 or the Rules, with intent to evade payment of Service tax on the part of the appellant. The appellant willfully intends to pay the Service Tax and accordingly, I set aside the penalty imposed under Section 78 of the Finance Act 1994.

8. In view of the above observations, the appeal filed by the appellant is thus partly allowed.

(Operative part of the Order was pronounced in the open Court.)

(P.K. Choudhary)
Member (Judicial)

Pooja