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

Appeal No. ST/75708/2017

(Arising out of Order-in-Appeal No.27/ST-I/KOL/2017 dated 31.01.2017 passed by the Commissioner of Central Excise(Appeal-I), Kolkata)

M/s. Bengal Surgicals Ltd.

Applicant (s)/Appellant (s)

Vs.

Commissioner of Service Tax & Central Excise, Kolkata

Respondent (s)

Appearance:

Shri Victor Dutta, Advocate for the Appellant (s)
Shri S.Mukhopadhyay, Suptd.(AR) for the Respondent (s)

CORAM:
Hon'ble Shri P.K.Choudhary, Member (Judicial)

Date of Hearing: 10.05.2018

Date of Pronouncement: 03.09.2018

ORDER NO.FO/76551/2018

Per Shri P.K.Choudhary

1. Briefly stated the facts of the case are that the appellant is registered as SSI Unit, engaged in the manufacture of Cotton Wool, Bandages, Gauge and similar other para-medical items used for medical/hygiene purposes in their factory situated at Kalyani, Nadia. In course of business they availed service from Goods Transport Agencies (GTA). Regarding output service, it sometimes availed services of GTA and also uses its own vehicles for clearance of goods. Show Cause Notice dated 06.02.2013 was issued alleging non-registration with the Service Tax Department and also alleging that as per Rule 2(1)(d)(v) of the Service Tax Rules, 1994 and Notification No.35/2004-ST dated 03.04.2004, in relation to taxable service provided by a goods transport agency, the consignor/consignee, who is making payment

towards freight, either himself or through authorized agent would be liable to pay service tax. It is the case of the Revenue that the appellant assessee being one of the seven specified categorized person and having paid freight charges is liable to pay service tax on "Transport of Goods by Road Service" received. The period of dispute is from October, 2007 to March, 2008, 2008-2009, 2009-2010, 2010-2011, 2011-2012 and April, 2012 to June, 2012. The Adjudicating Authority confirmed the demand of Rs.1,44,349/- for the period October, 2007 to March, 2008, 2008-2009, 2009-2010, 2010-2011, 2011-2012 and imposed equal penalty under Section 78 and also imposed penalty under Section 77(1)(a) and under Section 77(2). On appeal the Ld. Commissioner (Appeals) upheld the adjudication order and rejected the appeal. Hence, the present appeal before the Tribunal.

2. Ld. Advocate appearing on behalf of the appellant company submits that the ld. Commissioner (Appeals) has upheld the order passed by the Adjudicating Authority by simply repeating the findings and without taking into consideration the submissions made. It is his submission that the appellant was all along registered with the Service Tax Department since 1998 and the service tax liability for the period 2011-2012 have been discharged as a recipient of GTA Service.

3. Ld. DR reiterates the orders of the lower authorities.

4. Heard both sides and perused the appeal records.

5. I find that the appellant was initially registered in the previous regime of GTO and was paying taxes. The appellant was registered with the Service Tax vide ST-2 dated 10.02.1998. Subsequently, they received a letter dated 29.03.2004 from the Superintendent of Central Excise, Range-IV, Kalyani Division which read as under:

"In this connection, it is to be mentioned that in case of service received from Goods Transport Operators, a factory registered as SSI Unit with the State Government is exempted from the operations of Service tax obligations from 16.11.1997 in view of amendment of Notification No.43/97-ST dated 05.11.1997 (GSR 639E dated 5/11/97 by Section 160(1) of the Finance Act, 2003"

The appellant again applied for registration on 19.06.2012. The amendment that a factory being registered under the State Government as SSI Unit, need not pay Service Tax, being confused them about the non-taxability. However, GTA services were taxable w.e.f. 01.01.2005. I also find from records that the appellants have paid the service tax demand alongwith interest for the period 2011-2012 and also for the period April-June, 2012. From the perusal of records I do not find any element of fraud or collusion or willful miss-statement or suppression of facts or contravention of any of the provisions with the intent to evade payment of service tax. Accordingly, the demand for the extended period is set aside as barred by limitation. The penalty as imposed under Section 77(1)(a) and Section 77(2) of the Finance Act, 1994 are set aside by invoking the provisions of Section 80 of the Finance Act, 1994.

6. In view of the above discussions the impugned order is set aside and the appeal filed by the appellant is accordingly disposed of.

(Pronounced in the open court on 03.09.2018)

S/d.
(P.K.Choudhary)
MEMBER (JUDICIAL)

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