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

S.T.Appeal No.289/09 & CO-7/10

(Arising out of Order-in-Original No.20/Commissioner/ST/Kol./2009-10 dated 09.09.2009 passed by the Commissioner of Service Tax, Kolkata)

CCEx., Kolkata

Applicant (s)/Appellant (s)

Vs.

M/s Hindustan Controls & Equipments (P) Ltd.

Respondent (s)

Appearance:

Shri A. Roy, Supdt. (AR) for the Revenue
None for the Respondent (s)

CORAM:

HON'BLE SHRI P.K.CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE SHRI V. PADMANABHAN, MEMBER (TECHNICAL)

Date of Hearing : 16.11.2018
Date of Decision : 16.11.2018

ORDER NO…FO/A/76975/2018

Per Bench :

The present appeal is filed by the Revenue against the Order-in-Original No.20/Commissioner/ST/Kol./2009-10 dated 09.09.2009.

2. The respondent provided taxable services, namely, (i) erection, commissioning & installation, (ii) consulting engineer and received Goods Transport Agency (GTA) service but disclosed to the department much lower taxable value for computation of service tax for the period from 2003-04 to 2007-08. Moreover, they did not obtain service tax registration in respect of GTA service received by them for which liability was on them to pay appropriate service tax. Accordingly,

show-cause notice was issued for recovery of differential amount of service tax of Rs.84,39,406/- and Education Cess of Rs.2,70,040/- invoking longer period of limitation along with interest under Section 75 of the Act along with proposal for imposing penalty under Section 76 and 78 of the Act. Adjudicating Authority observed that the assessee did not raise any point on classification of services provided/received by them. Only contention of the assessee was regarding quantification of demand. Investigating officer did not disclose in the show-cause notice where from the figures were collected for computing service ax liability of the assessee. Moreover, erection, commissioning and installation service came under service tax net with effect from 01.07.2003 and the assessee was liable to pay service tax on GTA service received by them with effect from 01.01.2005. So, liability of service tax of the assessee on these two services should be computed from 01.07.2003 to 01.01.2005 respectively. In the show-cause notice, the total differential amount of service tax was calculated without taking into account the amount of liability towards GTA service. At the time of personal hearing, the assessee submitted monthwise break-up of amounts, duly certified by Chartered Accountant, received by them for providing/receiving taxable services. In terms of Rule 6 (1)(ii) of Service Tax Rules, 1994, service tax is payable on the amount received. So, in absence of details of source in the show-cause notice, adjudicating authority accepted the value of taxable service provided/received by the assessee shown in the statement submitted by the assessee on 12.08.2009. Accordingly, out of demanded amount of service tax of

Rs.84,39,406/-and Education Cess of Rs.2,70,040/- an amount of Rs.32,92,381/- of service tax including Education cess was confirmed under Section 73(2) of the Act invoking longer period of limitation. Interest on the total liability of Rs.86,63,475/- for the period from 01.07.2003 to 31.03.2008 was ordered to be paid under Section 75 of the Act. Penalty of Rs.32,92,381/- was imposed under Section 78 of the Act. No penalty was imposed under Section 76 of the Act.

3. The above order has been challenged by the Revenue on the following grounds :

(i) The Adjudicating Authority accepted the statement submitted by the respondent on 12.08.2009, without carrying out any further investigation. He has restricted the demand to the actual amount received during the period of dispute, but he has failed to make any appropriate adjustment for the opening balance and inclusive balance. Hence, Revenue has contended that the correct service tax dues have not been determined.

(ii) The Adjudicating Authority has failed to take note of the liability of the respondent to GTA service for the period from 2003-04 to 2007-08, for a total amount of Rs.13,77,755/-. He has also failed to make any observations while he has dropped the demand of service tax under GTA service.

(iii) The Adjudicating Authority did not impose any penalty under Section 76 of the Finance Act, 1994.

4. When the appeal was called for hearing, none appeared on behalf of the respondent and also not appearing on earlier dates of

hearing i.e. 12.06.2018 & 12.07.2018. Since the appeal pertains in the year 2009, the same is taken up for disposal on merit.

5. Heard the ld.D.R., Shri A.Roy, for the Revenue.

6. After hearing the ld.D.R. for the Revenue and perusal of records, we are of the view that the Revenue has pointed out serious mistake committed by the Adjudicating Authority in arriving at the demand for service tax in this order. The levy of service tax was required to be paid on receipt basis during the period under dispute. But it is seen that the adjudicating authority has not computed the correct service tax liability, but has gone by the submissions on calculation furnished by the Revenue. A few issues have been highlighted by the Revenue in terms of non-payment of GTA service and non-imposition of penalty under Section 76 of the Finance Act, 1994.

7. We are of the view that the impugned order merits to be set aside and the matter remanded to the adjudicating authority to pass a detailed order after taking into account the grounds agitated before this Tribunal. No doubt, the effective hearing will be made available to the respondent before passing the order in the denovo proceedings. The Adjudicating Authority is directed to complete the denovo proceedings within a period of three months from the date of communication of this order. Cross Objection also gets disposed off.

(Dictated and pronounced in the open court)

Sd/	Sd/
(P.K.Choudhary)	**(V.Padmanabhan)**
Member (Judicial)	**Member (Technical)**

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