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

S.T.Appeal No.94/10

(Arising out of Order-in-Original No.46/Commr./ST/Kol./2009-10 dated 29.01.2010 passed by the Commissioner of Service Tax, Kolkata)

M/s Security & Investigation Bureau

Applicant (s)/Appellant (s)

Vs.

CST, Kolkata

Respondent (s)

Appearance:

Shri Lachman Samtani, C.A. for the Appellants(s)
Shri A. Roy, Sudpt. (A.R). for the Revenue

Ex.Appeal No.122/10 & CO/51/10

(Arising out of Order-in-Original No.46/Commr./ST/Kol./2009-10 dated 29.01.2010 passed by the Commissioner of Service Tax, Kolkata)

CST, Kolkata

Applicant (s)/Appellant (s)

Vs.

M/s Security & Investigation Bureau

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Appearance:

Shri A. Roy, Sudpt. (A.R). for the Revenue
Shri Lachman Samtani, C.A. for the Appellants(s)

CORAM:

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

Date of Hearing : 30.01.2019
Date of Decision : 30.01.2019

ORDER NO.FO/75131-75132/2019

Per Shri V.Padmanabhan :

The present appeals are cross appeals against Order-in-Original No.46/Commr./ST/Kol./2009-10 dated 29.01.2010. The Department has also filed a Cross Objection against the appeal filed by the assessee.

2. Brief facts of the case are that the appellant assessee, is engaged in providing various services, namely, (i) Security Service, (ii) Manpower Supply and (iii) Cleaning Service. The Officers of the Service Tax Commissionerate visited the office of the appellant on 20.11.2007 and scrutinized the records of the appellant for the period 2003-04 to 2007-08. The appellant was found to pay service tax periodically and files returns. However, the Departmental Officers, while scrutinizing the Bank statement of the appellant, was of the view that the appellant had failed to discharge service tax in full for the services provided by them. From the Bank statement, the Officers noticed that the appellant had realized an amount of Rs.103.25 Crores, but they reportedly declared only an amount of Rs.88.40 Crores as amount realized during the period 2003-04 to 2007-08 in their ST-3 Returns. After scrutiny of the records and recording the statement of the proprietor of the appellant, the Department proceeded to issue show-cause notice dated 17.10.2008 proposing the demand of service tax for an amount of Rs.2.04 Crores and Education Cess of Rs.5.8 lakhs. Appropriate interest on the due service tax amount as well as penalties under Sections 76 & 78 were proposed in the show-cause notice. After due process of adjudication, the Adjudicating Authority

passed the impugned order, in which he restricted the demand for service tax to an amount of Rs.36.07 lakhs along with interest. The demand for the balance amount of about Rs.1.69 Crores was dropped. The Adjudicating Authority also imposed penalty equal to the service tax amount confirmed under Section 78 of the Finance Act, 1994. Further, penalty under Section 76 was also imposed.

3. The Adjudicating Authority considered the submissions made in detail by the appellant against the proposed service tax demand. He observed that the total receipts appearing in the Bank statement, also included various amounts, which were not in the nature of consideration for services rendered. Accordingly, he concluded that such amounts in the Bank Account cannot be held liable for payment of service tax. The nature of such transactions were :

(i) Interbank transfers (Contra entries) ;

(ii) Refund of EMD/FDR encashment ;

(iii) Cheque returned ;

(iv) Supply of SEZ ;

(v) Cleaning and Manpower supply services upto 16.06.2005 (Since these two services were included in the Statute only w.e.f.16.06.2005).

4. The Revenue has filed an appeal against the portion of the service tax demand dropped by the Adjudicating Authority.

5. In the appeal filed by the assessee, a part of the service tax confirmed is challenged. Both the appeals are taken up together for decision through this common order.

6. The assessee is represented by Shri Lachman Samtani, ld.C.A. and Revenue is represented by Shri A.Roy, ld.D.R..

7. The submissions made by the ld.C.A., are summarized below :

(i) The assessee has provided security service, manpower supply as well as cleaning service during the period of dispute. As far as security service is concerned, the demand is admitted by the assessee. However, in respect of manpower supply as well as cleaning service, it is submitted that there is no justification for demand of service tax for the amount received towards these services prior to date of their introduction in the Statute i.e. 16.06.2005.

(ii) The ld.Commissioner in the impugned order, has declined to allow the deduction towards the above two services by considering the entire receipts as pertaining to security service.

(iii) He also submitted a copy of a Table duly certified by M/s Das & Ghosh, Chattered Accountants, Kolkata, in which, month-wise summary of different services for the period April, 2003 to January, 2004, is given. The Table indicates month-wise figures towards supply of man-power, cleaning service as well as other miscellaneous amounts, such as, travelling and conveyance, tiffin allowances, service charges, labour welfare services etc.

(iv) The ld.C.A. submitted that the deduction may be allowed for all these services since these are not in the nature of consideration for security services.

8. The ld.D.R. for the Revenue, justified the demand of service tax as ordered by the Adjudicating Authority. He also referred to the grounds of the appeal filed by the Revenue.

9. We have heard both sides and perused the records carefully.

10. During the disputed period 2003-04 to 2007-08, the assessee was found to have rendered security services. In addition, they have rendered other services, namely, manpower supply as well as cleaning service. The liability for security service stands admitted by the assessee. However, it is submitted that the liability for manpower as well as cleaning service, is to be restricted to the period w.e.f. 16.06.2005, when such services were introduced in the Statute.

11. The demand in the show-cause notice was arrived at on the basis of the Bank statement of the assessee for the relevant period. The Adjudicating Authority has carefully considered the submissions made by the assessee before him and have excluded various amounts received in the Bank towards interbank transfers, refund of EMD/FDR encashment, cheque returned and other charges. Show-cause notice has been originally issued by taking into account the entire receipt in the Bank account. However, it is evident that the receipts indicated in the impugned order are clearly not by way of consideration for any service rendered. Accordingly, we find no infirmity in the stand taken by the Commissioner to exclude such amounts from the gross value of taxable services. Hence, we reject the grounds of appeal filed by the Revenue. Accordingly, the appeal filed by the Revenue is rejected. Cross Objection also gets disposed off.

12. The assessee has submitted that the Adjudicating Authority has declined to consider deduction of various amounts claimed by them towards providing services in the nature of manpower supply as well as cleaning services for the period prior to 16.06.2005. The Adjudicating Authority has observed that deductions for such amount cannot be granted for the reason that the total receipt has been considered security service. Since the assessee has not produced any evidence of realization of amount towards manpower and cleaning service, the same cannot be excluded.

13. We have very carefully perused the Table duly certified by the Chartered Accountant and submitted by the C.A. on behalf of the assessee. This has been submitted to quantify and claim deduction for Manpower and Cleaning services prior to 16.06.2005. The Table indicates month-wise figures for various services, such as, supply of manpower, cleaning service as well as various other miscellaneous services including travelling and conveyance, tiffin allowances, service charges, labour welfare services etc.. We also find from the said Table the details of invoices with particular dates as well as amounts for various such services. In this connection, we observe that the Table as well as supporting documents indicates the service rendered with invoice value, but the liability for service tax during the relevant time was to be determined on the basis of the consideration received by the service provider. Accordingly, the amount towards manpower supply as well as cleaning service can be considered for exclusion if such amounts have been received as consideration for providing these

services, during the period prior to 16.06.2005. The Table as well as accompanying documents, even though duly certified by the Chartered Accountant, does not substantiate the above consideration. As such, we are unable to extend the deduction of such value for determination of service tax liability.

14. In view of the above, the impugned order is set aside and the matter is remanded to the original Adjudicating Authority for re-quantifying of the demand and passing denovo order, after duly considering the claim of the appellant for deduction of manpower supply and cleaning agency service to the extent of receipt of consideration prior to 16.06.2005. The assessee is at liberty to claim the deduction duly supported by a Certificate from an independent Chartered Accountant. No doubt, an opportunity of effective hearing is required to be extended before passing order in the denovo proceeding.

15. Since the matter is very old, we direct that the denovo adjudication may be completed within a period of three months from the date of receipt of this order.

(Dictated and pronounced in the open court)

Sd/
(P.K.Choudhary)
Member (Judicial)

Sd/
(V.Padmanabhan)
Member (Technical)

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