IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

EASTERN ZONAL BENCH: KOLKATA

Appeal No. ST/76552/2018

(Arising out of Order-in-Appeal No. 91/DGP-ST/2018 dt. 13/02/2018 passed by the Commissioner of Customs, Central Excise & Service Tax, Durgapur.)

M/s. Jai Balaji Industries Ltd. Appellant (s)
Vs.
Commissioner of CGST & Central Excise, Siliguria Respondent (s)

Appearance

Shri S. Mohapatra, General Manager (Taxation)
Shri D. Haldar, A. C. (A. R.) for the Revenue

CORAM:

HON'BLE SHRI P. K. CHOUDHARY, MEMBER (JUDICIAL)
Date of Hearing-19.02.2019

ORDER NO. FO/75201/2019

PER CORAM

The facts of the case in brief are that the appellants are manufacturer of Iron and Steel items. They have received commission from different clients against provision of 'Business Auxiliary Services'. Show Cause Notice dated 09/09/2014 was issued alleging evasion of Service Tax during the month of November, 2009 and March 2010 amounting to Rs.7,43,002/-. The Show Cause Notice also alleged non-payment of Service Tax on Rs.63,74,216/- being the TDS amount received during the year 2009-10.

The Adjudicating Authority confirmed the demand along with interest and imposed equal penalty under Section 78 and a penalty of Rs.5000/- under Section 77 of the Finance Act, 1994.

On appeal, the Ld. Commissioner (Appeals) upheld the Adjudication Order and rejected the appeal. Hence, the present appeal before the Tribunal.

2. The Ld. Authorized Representative appearing on behalf of the Appellant Company submits that during the year 2008-09 and 2009-10, they had provided services of Sales Commission Agent to M/s. Cuprum Bagrodia Ltd. for sale of HEMM Spares and accordingly invoices were raised for the services rendered on month to month basis. It is his submission that the Commission received was accounted for in their Books of accounts and ST-3 Returns were also filed on regular basis.

The Ld. representative also submits that during the year 2008-09, the assessable value works out to Rs.3,22,86,371/- and the Service Tax liability was Rs.39,90,597/- but inadvertently Service Tax of Rs.68,62,618/- was paid which resulted in excess payment of Rs.28,72,021/-. Subsequently, during the year 2009-10, the assessable value works out to Rs.4,19,47,867/- and the Tax liability works out to Rs.45,06,512/-. Against this liability, the Service Tax paid was Rs.38,32,916/- and the balance amount of 6,73,596/- was adjusted from the excess tax paid in the preceeding period. Hence, there is no short payment or non-payment of the Service Tax to the extent of Rs.7,43,002/- as alleged.

The Ld. Representative further contended that the Service Tax liability was all along calculated on the gross amount of Commission received and therefore, there is no occasion to again calculate Service Tax on the amount of Tax deducted at source as claimed by the Department in the Show Cause Notice. He filed a written submission and a copy of Chartered Accountant's Certificate in support of his submission.

3. The Ld. DR reiterates the orders of the Lower Authorities and contends that the submissions of the assessee in respect of the various figures was not consistent all throughout and accordingly the claim of the appellant is subject to verification.

4. Heard both sides and perused the appeal records.

5. I find that the short payment of Rs.7,43,002/- arose during the financial year 2009-10 as the amount was adjusted from the excess payment made in the financial year 2008-09 and this fact is verifiable from the Statutory records, audited accounts and other relevant documents of the appellant. Regarding the liability of Service Tax on the amount of tax deducted at source, it is evident that there cannot be any liability fastened on the amount received as TDS, since the entire amount of Service Tax has to be calculated on the gross amount received by the appellants.

6. On perusal of records, I find that the appellants have calculated their Service Tax liability on the gross amount of Commission received and hence, there is no occasion to demand the Service Tax again on the TDS amount received by them which is in fact a portion of gross amount.

7. In view of the above discussions, the impugned orders are set aside and the appeal filed by the appellant is allowed with consequential relief, if any.

(Dictated and pronounced in the open court.)

Sd/-
(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

Pooja