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

REGIONAL BENCH – COURT NO.2

S. Tax Appeal No. 75729 of 2017

Arising out of Order-in-Appeal No.11/ST/HAL/2017 dated 30.01.2017 passed by Commissioner of Central Excise, (Appeal-I), Kolkata.

M/s. Real Feed Pvt. Ltd.
16/1a Abdul Hamid Street
1st Floor Kolkata, KOLKATA,
WEST BENGAL-700069 **Appellant (s)**

VERSUS

Commr. of Central Excise & Service Tax, Haldia
Commr. of CGST & CX, 15/1,
STRAND ROAD, CUSTOM HOUSE
, KOLKATA-700001

Respondent (s)

APPERANCE :

Shri S. P. Siddhanta, Consultant for the Appellant
Shri A. Roy, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. P.K.CHOUDHARY, MEMBER (JUDICIAL)

ORDER NO. FO/77298/2018

Date of Hearing : 07.09.2018
Date of Decision : 07.09.2018

PER P.K.CHOUDHARY :

Briefly stated the facts of the case are that the appellant is engaged in providing the services of "Renting of Immovable Property" to various tenants from 2007-08 onwards.

Show Cause Notice dt. 09/01/2012 was issued for non-declaration of the value of the aforesaid service in their periodical ST Returns during the period 2008-09, 2009-10 & 2010-2011 and for recovery of Service Tax along with interest and for imposition of penalty.

The Adjudicating Authority confirmed the demand of Service Tax of Rs.4,72,851/- along with interest and imposed a penalty of equal amount under Section 78 and a penalty of Rs.5,000/- under Section 77 of the Finance Act, 1994.

On appeal, the Lower Appellate Authority upheld the Adjudication Order and rejected the appeal. Hence, the present appeal before the Tribunal.

2. The Ld. Consultant appearing on behalf of the appellant submits that the total demand covering the period from 2008-09 to 2010-11, has been paid by the appellants along with interest after passing of the adjudication order is as under:-

SI No.	Challan No.	Date	Amount in Rs.
1.	50080	26.09.2012	5158/-
2.	50007	18.11.2012	2,47,200/-
3.	50408	27.11.2012	2,47,200/-
		Total	4,99,558/-

The Ld. Consultant further submits that there was no suppression or mis-statement or intent to evade payment of Service Tax on the part of the appellant assessee. The delay in payment of Service Tax arose because of bonafide belief arising from the Order of the Hon'ble High Court of Delhi in Home Solution Retail India Ltd. Vs. Union of India 2009 20 STT 129 (Del. HC DB), wherein it was held that Services in relation to 'renting of immovable property' is not subject to Service Tax. On the basis of the aforesaid judgment of Hon'ble Delhi High Court, many tenants had stopped payment of Service Tax. Subsequently, the Larger Bench of the Hon'ble High Court had over ruled the earlier decision in the case of Home Solution Retail India. These circumstances led to a lot of confusion and the appellants were in doubt regarding their liability for payment of Service Tax. The Ld. Consultant further submits that they are not disputing the liability of payment of Service Tax and have in fact paid the entire amount of Service Tax demanded vide the order-in-Original dt. 23/08/2012 along with applicable interest. They were in appeal before the Lower Appellate Authority praying for relief from imposition of penalties under Section 77 and 78. The same prayer is being reiterated before the Tribunal

3. The Ld. DR reiterates the orders of the Lower Authorities.

4. Heard both sides and perused the appeal records.

5. I find that the demand of Service Tax was confirmed with interest and equal amount of penalty under Section 78 ibid and Rs. 5,000/- under Section 77 ibid which has been upheld by the Lower Appellate Authority.

I also find from the records that the Tribunal directed the Ld. DR to write to the Jurisdictional Commissionerate for verification of the Challans filed by the appellant in support of their claim regarding the payment of the entire Service Tax demanded in the adjudication order.

I further find that the Assistant Commissioner of Central Tax Sankrail Division, Howrah GST Commissionerate, vide Communication No.V(4)08/CE/TAR/R&R/Sankrail/2017 dt. 16/03/2018 confirmed the payment made by the appellant assessee after verification.

I observe that the liability of Service Tax on Renting of Immovable Property was a subject matter of dispute after the decision of Hon'ble Delhi High Court in Home Solution Retail India Ltd. and landlords/service providers were under the bonafide belief that no liability arose in respect of services provided under the category of "Renting of Immovable Property". In some cases even though the landlord/service providers attempted to comply with the Statutory Provisions, but the tenants by referring to the decision of Hon'ble Delhi High Court denied entertaining the payment of Service Tax.

On perusal of records, I do not find any ingredient of suppression of facts, mis-statement etc. with an intent to evade payment of Service Tax. I find it an appropriate case for invoking of provisions of Section 80 of the Finance Act, 1994. Accordingly, the penalties imposed under Section 77 and 78 are set aside by invoking provisions of Section 80. The appeal filed by the appellant is allowed with consequential benefit to the appellants.

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

Pooja