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

REGIONAL BENCH – COURT NO.2

S. Tax Appeal No. 75346 of 2018

Arising out of Order-in-Appeal No.169/RAN/2017 dated 14.11.2017 passed by Commissioner (Appeals), CGST, Central Excise, Ranchi.

M/s. Gooodwill Properties
Katras Road bank More Dhanbad,
826001 **Appellant (s)**

VERSUS

CCE & ST, Dhanbad
H. E. School Road, Visti Para,
Dhanbad, Jharkhand

Respondent (s)

APPERANCE :

Shri Sandeep Agarwal, Advocate for the Appellant
Shri D. Hardar, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO. 75444/2019

Date of Hearing : 02.04.2019
Date of Decision : 02.04.2019

PER P.K.CHOUDHARY :

The facts of the case in brief are that the appellant firm, M/s. Goodwill Properties are owners of multi-storey Commercial Building which has been leased out on rent to various Banks and others. The dispute arose when renting of immovable property service was brought into Service Tax with effect from 01/06/2007. When the Appellant firm approached all their tenants for collection of Service Tax, the two branches of State Bank of India did not admit the liability to pay Service Tax which prevented the appellant in complying with their statutory obligation in respect of these two tenants. They even had to file writ petition before the High Court to pressurize the Bank to pay Service Tax which the Banks finally agreed at a later date after much persuasion. The appellants are not disputing the liability of Service Tax and have been regularly complying with the Statutory Provisions.

Show Cause Notice dt. 24/04/2015 was issued for the period from 2009-10 to 2013-14. The Adjudicating Authority confirmed the demand of Service Tax amounting to Rs.29,04,413/- along with interest under Section 78 of the Finance Act, 1994 and also imposed equal penalty of Rs.10,000/- under Section 77 of the Finance Act, 1994.

On appeal before the Lower Appellate Authority, the Ld. Commissioner (Appeals) rejected the appeal. Hence, the Appellant-Assessee is in appeal before the Tribunal.

2. The Ld. Advocate appearing on behalf of the appellant firm submits that the Adjudication Order was decided exparte and hence, they were prevented from placing their facts and documents before the Adjudicating Authority.

The Ld. Advocate made the Bench go through Form 26AS of the appellants, wherein on earlier date the figures which were shown in respect of State Bank of India, "TAN: RCHS01063G" and "RCHS03275C", the gross amount of rent shown against these two tenants was subsequently modified and the correct figures of the rent receipt from the respective tenants were reflected. Hence, this mistake had occurred at the tenant's end who had filed their TDS returns and subsequently on being pointed out, the above mistakes were rectified by revising their TDS returns. These facts could not be place before the Adjudicating Authority and the earlier figures have been considered, which were erroneously more than the actual figures of the rent receipt and the same needs to be modified.

3. The Ld. DR reiterates the orders of the Lower Authorities and submits that the claim of the appellants needs to be verified.

4. Heard both sides and perused the appeal records.

5. After hearing both sides and on perusal of the records, I observe that two branches of the State Bank of India having TAN: "RCHS01063G" and "RCHS03275C" had shown figures in respect of rent paid by them to the appellants which were in-correct figures since the same would not also talley with the actual rent fixed and other relevant documents. When this discrepancy was brought to the notice of the respective branches of Banks

by the appellant firm, after much persuasion, they admitted their mistakes and rectified the same by filing revised TDS returns which showed correct figures of the rent paid by them. The appellants are praying for considering the rectified figures which are also the correct figures in computing the Service Tax demand for the financial year 2013-14 and as admitted by the Ld. Advocate, the liability of this figures have already been discharged and the statutory returns have been filed.

6. It is my considered view that the mistake being factually apparent from the records needs to be rectified and the demand should be modified accordingly. The corrected figures as per the Revised TDS returns should be taken as cum tax value and the demand should be re-quantified accordingly. For this limited purpose, the matter is remanded to the Adjudicating Authority.

7. Further, on perusal of records, I do not find any ingredient of suppression, mis-statement etc. with an intent to evade payment of Service Tax. Accordingly, the penalty imposed under Sections 77 and 78 are set aside.

8. The appeal is partly allowed in the above terms.

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

Pooja