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

REGIONAL BENCH – COURT NO.2

S.Tax Appeal No.75420 of 2018

(Arising out of Order-in-Appeal No.210/ST-I/Kol/2017 dt. 26.09.2017 passed by Commr. of CGST & Central Excise (Appeal I), Kolkata)

M/s Science City
J.B.S.,
Haldane Avenue,
Kolkata-700046

Applicant (s)

VERSUS

CGST & Excise, Kolkata North
Kendriya Utpad Shulk Bhawan,
180, Rajdanga Main Road,
Shantipally,
Kolkata-700107

Respondent (s)

APPERANCE :

Ms.Shilpi Bajoria, C.A. for the appellant
Shri D. Halder, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO.77331/2018

DATE OF HEARING : 07.09.2018
DATE OF DECISION : 07.09.2018

PER P.K.CHOUDHARY :

Facts of the case in brief are that the appellant, herein, Science City, is a constituent unit of the National Council of Science Museums (NCSM), a society registered under the West Bengal Societies Registration Act, 1961. The NCSM is an Autonomous Body founded by the Government of India and functions under administrative control of the Ministry of Culture. The NCSM is recognized as a Scientific and Industrial Research Organization by the Government of India, Ministry of Science & Technology. Show-cause notice dated 16.10.2012 was issued alleging discrepancies in figures as per financial records with that of figures mentioned in ST-3 Returns for the period from April, 2007 to March, 2011. The Adjudicating Authority confirmed differential amount of service tax amounting to Rs.7,89,336/- along with interest and imposed penalty of equal amount under Section 78 of the Finance Act, 1994. On Appeal, the Commissioner (Appeals) upheld the adjudication order. Hence the present appeal before the Tribunal.

2. The ld.Counsel appearing on behalf of the appellant, submits that there was no occasion for issuance of show-cause notice since the appellant assessee has all along complied with the statutory provisions in respect of their liability towards service tax and were also submitting the details as asked for and have explained the discrepancies by filing proper reply to the queries made. She also submitted that the show-cause notice has no calculation sheets attached explaining thereby the reason of amount demanded or refuting the calculation provided by the appellant. Show-cause notice only mentioned that the tax was being demanded because gross taxable value received by the appellant is more that the amount shown in ST-3 Returns for the period 2007-2011. She refuted the allegation made in the show-cause notice and submitted that in fact the appellant had paid the tax in excess than the amount which has been demanded. It is her submission that the demand has been calculated ignoring the amount which was refunded to the parties due to the alteration of booking made and foreclosure of the contracts. Thus service tax liability is to be determined on the basis of gross amount received. Further, it is submitted that the gross amount received should be treated as inclusive of tax due to be paid by the ultimate customer of the services unless service tax is also calculated separately from the customer. She relied upon the decision of the Tribunal in the case of CCEx. Vs. Advantage Media Consultant reported in [2008] 14 STT 483 (Kol-CESTAT). The ld.Counsel submitted reconciliation statement of their service tax liability for the disputed period along with written submissions at the time of hearing of the appeal. The same are reproduced below :

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S.T.Appeal No.75420/18

TABLE-A

Science City
J.B.S. Haldane Avenue,Kolkata – 700046.
Reconciliation of taxable amount on renting of immovable property calculated by Department and the Appellant

	Financial year	2007-08	2008-09	2010-11
	Gross receipt on renting as calculated by Department(Including advances)	15,469,586.00	18,685,499.00	20,829,006.00
Less:	Dishonour of Cheque	789,600.00	-	-
Less:	Amount refunded to the client	-	253.00	200,000.00
Less:	Differential value(other)	19,900.00	-	-
Add:	Advance license fees			
	Gross receipt as per assessee(including advance)	14,660,086.00	18,685,246.00	20,629,006.00
	upto Sept 2008 (inclusive of tax)		6,991,578.00	458,025.00
	Sept to Mach 2008 (exclusive of tax)		11,693,668.00	20,170,981.00
	Difference between ledger and ST-3	3,018,460.00	1,287,808.00	14,144.00
	Gross receipt as per ST-3 (excluding tax)	11,641,626.00	17,397,438.00	20,614,862.00
	service tax			
	2007-08 (inclusive of tax)	1,612,661.65		
	upto Sept 2008 (inclusive of tax)		769,098.47	42,771.15
	Sept to Mach 2008(exclusive of tax)		1,445,337.36	2,077,611.04
	Total Tax Payable	1,612,661.65	2,214,435.83	2,120,382.19
	Actual Service Tax Paid	1,587,093.00	2,452,364.00	2,123,346.00
	Short paid	25,568.65		
	Excess Tax paid		237,928.17	2,963.81
	Net excess tax paid	215,323.33		

TABLE-B

Science City
Science City
J.B.S. Haldane Avenue,Kolkata – 700046.
Reconciliation of taxable amount on convention service calculated by Department and the Appellant

	Financial Year	2009-10	2010-11
	Gross receipt on convention as calculated by Department(including advances)	27,223,791.00	29,592,252.00
Less:	Amount refunded to the client	1,145,980.00	1,063,240.00
	Gross receipt as per appellant(including advance)	26,077,811.00	28,529,012.00
Add / Less :	Differential value between books of accounts and ST-3	(288,601.00)	439,387.00
	Gross receipt as per ST-3	26,366,412.00	28,089,625.00
	Service tax payable	2,686,014.53	2,938,488.24
	Service tax paid	2,717,783.00	2,893,254.00
	Excess paid	31,768.47	
	Short paid		45,234.24
	Net Short paid	13,465.77	

3. The ld.D.R. for the Revenue reiterates the order of the lower authorities.

4. Heard both sides and perused the appeal records.

5. I find that the appellant assessee have been complying with the statutory provisions by paying the service tax and filing ST-3 Returns. Show-cause notice was issued alleging discrepancies in the figures as shown in the ST-3 Returns with that of financial statement of the appellant during the period from 2007-08 to 2010-11. It is noticed from the reconciliation statement submitted that some amount of money received towards booking, was subsequently refunded to the parties on account of cancellation of booking. In many cases, service tax has not been collected separately and hence, the appellants have prayed for allowing cum tax benefit as envisaged in Section 67 (2). I find that in the case of Advantage Media Consultant (supra), the Tribunal has held that the total amount collected for the provision of services, should be treated as inclusive of service tax to be paid. When no tax is included separately, the gross amount has to be adopted to qualify the tax liability treating it as value of the taxable service plus service tax payable.

6. On perusal of records, I do not find any ingredient of suppression, mis-statement etc. with intent to evade payment of service tax. The facts in respect of activities undertaken by the appellants are same as mentioned in the show-cause notice, which was issued after a gap of nearly four years and the Department has not rebutted the calculation submitted by the appellant. Accordingly, penalty imposed under Section 78 is set aside.

7. It is my considered view that the discrepancies as mentioned in the reconciliation statement filed by the appellant as reproduced above being factually apparent from the record, needs to be rectified and demand should be taken as cum-tax and should be re-quantified accordingly. For this limited purpose, the matter is remanded to the adjudicating authority.

8. The appeal filed by the appellant, is allowed by way of remand to the Adjudicating authority.

(Operative part of the order was pronounced
in the open court on 07.09.2018)

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

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