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

Appeal No.ST/76176/2018

(Arising out of Order-in-Appeal No. 367/ST-I/KOL/2017 dated 14/12/2017 passed by the Commissioner (Appeals), Central Excise, Customs and Service Tax, Kolkata)

Naffar Chandra Jute Mills Ltd.

….Appellant (s)

Vs.

Commissioner of GST, Kolkata North

….Respondent (s)

Appearance:
Shri N.K. Chowdhury, Adv. for the Appellant (s)
Shri S.S. Chattopadhyay, Supdt. (AR) for the Respondent(s)

CORAM:
HON'BLE SHRI P.K.CHOUDHARY, MEMBER(JUDICIAL)

Date of Hearing/Decision :- 04-01-2019

ORDER NO. : FO/A/75597/2019

PER SHRI P.K.CHOUDHARY

The appellant is a manufacturer of jute goods and is also registered with jurisdictional service tax authorities for payment of service tax under reverse charge mechanism. The instant appeal has been filed by the assessee against demand of service tax of Rs. 4,69,461/- under the category of Goods Transport Agency (GTA) services for the period January 2012 to January 2014 alongwith interest under Section 75 of the Finance Act, 1994 and penalty under Section 78 of the said Act. Further penalty of Rs. 85,227/- has also been imposed under Section 78 of the said Act for payment of service tax after being pointed out in audit proceedings under the category of security services, legal services, renting of immovable property services which the appellant is contesting in this appeal.

2. Brief facts of the case are that the records of the appellant were audited by the Service Tax Department where certain short payment of service tax was pointed out. Without contesting the short payment of tax ascertained by the audit team for reasons of computation error, the appellant made payment of service tax with interest and informed the department before the issuance of impugned Show Cause Notice dated 05.12.2016. However, the appellant disputed the demand of service tax of Rs. 4,69,461/- under the category of GTA services, on services rendered by Container Corporation of India Limited, where the service provider has duly charged service tax on the invoices which has been duly paid by the appellant to the said service provider. Copies of the said invoices have duly been submitted by the appellant. In appeal proceedings, the Ld. Commissioner (Appeals) vide the impugned Order-in-Appeal dated 14.12.2017, confirmed the aforesaid demand of service tax under GTA services with the observation that liability to pay service tax is on recipient i.e. the appellant in terms of Notification no. 30/2012-ST dated 20.06.2012. The Ld Commissioner (Appeals) also observed that since liability to pay service tax was on the appellant, the same cannot be passed for payment to other person. He also rejected the prayer of the appellant for waiver of penalty on the ground that the tax under other category of taxable services was paid only on being pointed out by the audit team. Being aggrieved with the Impugned Order, the appellant is in appeal before me.

3. Ld. Advocate, Sri N. K. Chowdhury appeared for the appellant and Sri A. K. Biswas, Supdt (A/R) appeared for the Revenue.

4. The Ld. Advocate for the appellant submitted that the fact of payment of service tax by the service provider, Container Corporation of India Limited, is not in dispute. The said service provider is a Govt. of India Undertaking and there cannot be any reason to doubt the authenticity and veracity of the invoices issued by said service provider. Further, demand of service tax on same services would amount to double taxation which would be highly unjustified. He also submitted that since the short payment of service tax detected by the audit for reasons of calculation error was duly made good with interest.

The SCN ought not to have been issued much less further imposition of penalty. He further submitted that no specific evidence has been brought out in the SCN that there was deliberate attempt to evade payment of service tax. He relied upon the following decisions of the Hon'ble High Courts and various Benches of this Tribunal in support of his contentions :

- CCE & S.T, Bangalore vs. Adecco Flexione Workforce Solutions Ltd 2012 (26) STR 3 (Kar).
- CC, Bangalore vs. Powerica Ltd 2012 (276) ELT 302 (Kar)
- CCE, Noida vs. Accurate Chemical Industries 2014 (310) ELT 441 (All.)
- Vista Infotech vs. CST, Bangalore 2010 (17) STR 343 (Tri-Bang)
- M D Engineers vs. CCE, Vadodara 2013 (30) STR 389 (Tri-Ahmd)
- Abyss (The Hutch Shop) vs. CST, Ahmedabad 2013 (39) STR 125 (Tri-Hyd)

5. The Ld. Departmental Representative submitted that the appellant was legally liable to discharge payment of service tax on the GTA services under Reverse Charge Mechanism as per the notifications in force during the impugned period and therefore, the instant demand is correctly made. He also stated that the appellant is not entitled to any relief from penalty even if the appellant came forward to pay the tax before the issuance of the Show Cause Notice.

6. Heard both sides and perused the appeal records.

7. The main issue in dispute herein is whether appellant is required to pay service tax for receipt of services from Container Corporation of India Ltd, when admittedly the tax amount has been charged and paid on the invoices issued by the said service provider. In the given facts, the service provider is a Govt of India Undertaking and the genuineness of the documents issued by it cannot be doubted. I am of the view of that even though the appellant was required to pay service tax under reverse charge, they cannot be saddled with further demand on account of procedural lapse when admittedly tax has been duly paid to the service provider. The law in this regard has been well settled by

the decision of this Tribunal in case of Umasons Auto Cmpo Pvt. Ltd. vs. Commr. Of C. Ex. & Cus., Aurangabad [2017 (47) STR 377 (Tri.-Bom.)] as well as Commissioner Of Service Tax, Meerut-II vs. Geeta Industries P. Ltd. [2011 (22) S.T.R. 293 (Tri. - Del.)].

8. In view of the above, it is my considered view that the appellant cannot be made liable to pay service tax on this count and hence, the demand of service tax of Rs. 4,69,461/-, interest and penalty thereon under the category of GTA service are set aside.

9. The next issue is with regard to imposition of penalty of Rs. 85,227/- for service tax paid in audit proceedings before the issuance of Show Cause Notice. I find that the said amount of tax was ascertained in the audit consequent to computation error which was never disputed by the appellant. The short paid tax was made good with interest well before the issuance of Show Cause Notice. In view of the various decisions of Hon'ble High Courts and this Tribunal as relied upon by the appellant, I set aside the imposition of penalty. The appeal is allowed in the above terms with consequential benefits, if any.

(Dictated and pronounced in the open court.)

(P.K.Choudhary)
Member(Judicial)

T.K.