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

REGIONAL BENCH – COURT NO.2

S.Tax Appeal No.111 of 2009

(Arising out of Order-in-Original No.51/Commr./ST/Kol/2008-09 dated 13.02.2009 passed by Commr. of Service Tax, Kolkata)

M/s Coal India Limited
10, N.S.Road,
Kolkata-700001

Applicant (s)

VERSUS

CST, Kolkata
180, Santipally,
Rajdanga Main Road,
3rd Floor,
Kolkata-700107

Respondent (s)

APPERANCE :

S/Shri Avisekh Jaiswal, Chirag Mehta, both Advocates for the Appellant
Shri S. Mukhopadhyay, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. P.K.CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR.P.VENKATA SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO.76191/2019

DATE OF HEARING : 25.06.2019
DATE OF DECISION : 25.06.2019

PER P.K.CHOUDHARY :

The instant appeal has been filed by M/s. Coal India Limited against demand of service tax under the category of Management Consultancy services for the period 2002-03 to 2007-08 alongwith interest under Section 75 of the Finance Act, 1994 and penalty under Section 77 and 78 of the said Act which has been confirmed by the Ld. Commissioner of Service Tax, Kolkata, vide Order-in-Original dated 13.02.2009.

2. Briefly stated, the facts of the case are that the appellant is a PSU engaged in undertaking coal mining through its subsidiary companies.

The appellant charges 'Apex Charges' calculated at an amount of Rs 5/- per tonne of coal produced by the subsidiary companies for rendering them various assistance for exploration activities, software, in-house training to workmen and executives, liasioning with Governmental authorities and deciding price strategy matters, and other assistance, etc. In the course of audit of records, it was noted that appellant though liable to pay service tax under the category of Management Consultancy services did not pay the tax. However, the appellant paid the entire service tax alongwith interest and informed the Service Tax Department before the issuance of the impugned Show Cause Notice dated 20.10.2008.

3. Sri Avishek Jaiswal and Sri Chirag Mehta, Advocates, appeared for the appellant and Sri S. Mukhopadhyay, Supdt (A.R.) appeared for the Revenue.

4. The Ld. Advocate appearing for the appellant submitted that they have deposited the entire service tax amount with applicable interest well before the issuance of Show Cause Notice. He also submitted that there was no intention to evade payment of service tax inasmuch as they had a bonafide belief that they were not rendering any taxable service under the head of management consultancy services. He submitted that the demand could not be invoked under the extended period of limitation. On the same count, he contested the imposition of penalty in absence of intention to evade payment of tax. He relied on decision of this Tribunal in the case of Burn Standard Co. Ltd vs. CCE 2007 (216) ELT 77 (Tri-Kol) and the Apex Court's decision in the case of CCE vs. Chennai Petroleum Corp. Ltd 2007 (211) ELT 193 (SC) to contend that PSU cannot be said to have any intention to evade payment of duty.

5. The Ld. Departmental Representative supported the findings of the Ld. Commissioner and stated that the appellant did not deliberately pay the service tax amount and proceeded to pay only after the initiation of audit proceedings when the fact of non-payment came to the knowledge of the department. He prayed that the appeal filed by the assessee be rejected since the same is devoid of any merit.

6. Heard both sides and perused the appeal records.

7. We find that the appellant has paid the service tax alongwith interest before the issuance of the impugned Show Cause Notice. The appellant in the course of hearing has not pressed on the issue of taxability on subject services in the category of Management Consultancy services. Their main grievance is that being a PSU, they cannot be charged with the case of wilful suppression with intent to evade payment of tax.

8. We find that in the Show Cause Notice as well as in the impugned adjudication order, there is no positive evidence to show that service tax has been intentionally not paid except that mere allegation of suppression has been made to invoke the extended period of limitation. In view thereof, we do not find the case of suppression and hence, set aside the demand of service tax confirmed for the period covered under the extended period of limitation. Since this is not a case of suppression, imposition of penalties under Section 77 and 78 are also set aside in view of Section 80 of the Act. The appeal is thus allowed by way of remand for limited purpose of calculation of service tax leviable for normal period of limitation on cum-tax basis.

9. The appeal is disposed in above terms.

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

Sd/

(P. K. Choudhary)
Member (Judicial)

Sd/

(P.V.SUBBA RAO)
Member (Technical)

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