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

REGIONAL BENCH - COURT NO.2

Service Tax Appeal No.318 of 2011
(Arising out of Order-in-Original No.CCE/BBSR-II/S.Tax/No.02-04/COMMR./2011 dated 31.03.2011 passed by Commissioner of Central Excise, Customs & Service Tax, Bhubaneswar-II.)

M/s. Ores India Private Limited
(At/PO-Gurudwara Road, Barbil,
Dist.-Keonjhar, Orissa-758035.)

...Appellant

VERSUS

Commissioner of Central Excise & Customs, Bhubaneswar-II
.....Respondent
(Rajaswa Vihar, C.R. Building, Bhubaneswar, Orissa.)

APPEARANCE

Shri Kartick Kurmy, Advocate for the Appellant (s)
Shri S.S.Chattopadhyay, Authorized Representative

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

FINAL ORDER NO. 76918/2019

DATE OF HEARING : 25 October 2019
DATE OF DECISION : 17/12/2019

P.K.CHOUDHARY :

The instant appeal arises out of Order-in-Original No.CCE/BBSR-II/S.Tax/NO.02-04/COMMR./2011 dated 31-03-2011 passed by the Ld. Commissioner, Central Excise, Customs & Service Tax, Bhubaneswar-II Commissionerate, Bhubaneswar. By the impugned Order the Ld. Commissioner has confirmed Service Tax demand of Rs.83,33,905/- (including cess) for the period June, 2007 to May, 2009 under Section 73(2) of the Finance Act, 1994, along with interest and has imposed penalty U/s 77 & 78 of the Act.

2. Briefly stated, the facts of the case are that the Appellant entered into the Agreement dated 03-05-2005 with SAIL, Raw Material

Division for providing Mining Services. The Appellant filed their ST-3 returns for the period June, 2005 to May, 2009, disclosing the value of taxable services and service tax payable thereon. For some of the half yearly periods, there was delay in filing the ST-3 return which was filed subsequently with late fee. Further, in some of the periods, there was delay in payment of service tax as disclosed in the ST-3 returns. ST-3 returns were filed for the entire period in dispute.

3. The demand in the instant case is confirmed against Show Cause Notice dated 25-06-2010 (Page 151) demanding Service Tax of Rs.83,33,905/- for the period from June, 2007 to May, 2009 on the ground that the Appellant has not paid/short paid Service Tax on the services provided by them to SAIL. The Appellant was required to show cause why service tax should not be recovered from them along with interest and why penalty U/s 76, 77 and 78 should not be imposed from them. The Ld. Commissioner, by the impugned Order, upheld the demand along with interest and imposed penalty.

4. Shri Kartik Kurmy, learned Advocate appeared on behalf of the appellant and submitted that in the instant case they have disclosed the taxable value in the ST-3 returns filed by them. The learned Advocate referring to Para 1.5 & Para 5 of the show cause notice, submitted that the service tax in the instant case is demanded ignoring the ST-3 returns already filed by them which would also be evident from Annexure-A to the show cause notice. The learned Advocate took us through the ST-3 returns filed by the Appellant for the period from April, 2007 to September, 2007, October, 2007 to March, 2008, April, 2008 to September, 2008, October, 2008 to March, 2009 and April, 2009 to September, 2009 placed under Annexure - B of the Appeal paper book to substantiate that the ST-3 returns were already filed which are not taken into consideration while issuing the show cause notice, hence, the demand.

5. We find from the records that before passing the Stay Order dated 09-01-2014, this Tribunal had directed the Revenue to ascertain the factual position, as regards, claim of the Appellant that they have

already filed the ST-3 returns and disclosed taxable value in the said returns. Accordingly, the learned Authorised Representative for the revenue filed five ST-3 returns filed by the Appellant as received from the Commissionerate vide letter dated 18-12-2013 and examined the service tax liability on the basis of declaration of the taxable value mentioned in the said five returns for the period from April, 2007 to September, 2009. After considering the amount of service tax of Rs.12,99,634/- already paid by the Appellant, the learned Authorised Representative submitted that as per the returns, an amount of Rs.70,34,271/- has not been paid by the Appellant. Considering the submissions made by the Revenue, this Bench had directed the Appellant to deposit the balance service tax of Rs.70,34,271/- which was complied by the Appellant.

6. The learned Advocate referring to Para 1 of the Report dated 25-02-2011 of the Deputy Commissioner as forwarded by the Assistant Commissioner vide letter dated 18-12-2013 as above, submits that in the said report it is accepted that the ST-3 returns for the period October, 2008 to March, 2009 is filed by the Appellant on dated 06-07-2010. The learned Advocate referring to the 02nd Para of the said report, submits that for the period April, 2007 to September, 2007 and October, 2007 to March, 2008, it is accepted that the Appellant has filed ST-3 returns for the said period also. In the said report, it is reported that the service tax liability of Rs.49,60,717/- on the taxable value of Rs.4,01,35,248/- was not initially paid by the Appellant, however, later on vide Challan No.55, No.56 and No.57 all dated 10-12-2008, the Appellant has paid service tax and intimated to the department vide letter dated 11-12-2008.

7. In the said Report dated 25-02-2011 under Para 3 for the period 04-2008 to 09-2008, it is reported that the Appellant has disclosed taxable value of Rs.4,12,76,305/- and admitted tax liability of Rs.51,01,754/- in the ST-3 returns, out of which they have paid service tax of Rs.12,99,634/- only vide challan dated 13-07-2009 and the balance amount of Rs.38,02,120/- is outstanding. In respect of the

period October, 2008 to March, 2009 and April, 2009 to May, 2009,in the said report dated 25-02-2011 under Para 1, it is reported that the Appellant has already filed ST-3 returns and disclosed turnovers of Rs.5,26,88,789/- and Rs.33,84,672/- whereas the show cause notice was issued, assuming that the Appellant has not filed any ST-3 returns which is evident from Annexure - A to the show cause notice.

8. We find that as per the reports dated 25-02-2011 and dated 18-12-2013, the Appellant has already filed ST-3 returns for the entire period under dispute and have also paid service tax of Rs.12,99,634/- with returns and the balance amount of Rs.70,34,271/- is paid as per stay order passed by this tribunal aggregating to Rs.83,33,905/-, hence, the entire tax demand as per the impugned Order stood paid, which is upheld. With respect to payment of interest, the learned Authorized Representative submits that the Appellant is liable to pay interest on the delayed payment of service tax. We agree with the contentions of the learned Authorized Representative and hold that the Appellant would be liable to payment of interest in accordance with law, if not paid. We further uphold penalty of Rs.5,000/- under Section 77 of the Finance Act, 1994 for delayed filing of returns by the Appellant. However, we set aside penalty imposed U/s 78 of the Act noticing that the Appellant has already filed returns, though belatedly, and disclosed their service tax liability, hence, there is no suppression of facts etc involved in the instant case.

9. In the result, the appeal is thus partly allowed in the above terms.

(Order pronounced in the open court on 17 December 2019.)

SD/
(P.K.CHOUDHARY)
MEMBER (JUDICIAL)
SD/

(BIJAY KUMAR)
MEMBER (TECHNICAL)

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