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

REGIONAL BENCH - COURT NO.2

Service Tax Appeal No.76085 of 2017

(Arising out of Order-in-Appeal No.41/DNB/2017 dated 23.03.2017 passed by Commissioner(Appeals), Central Excise & Service Tax, Ranchi.)

M/s. Adhunik Fuels Private Limtied
(Flat No.307, Urmla Tower, Bank More, Dhanbad-826001.)

...Appellant

VERSUS

Commissioner of Central Excise & Service Tax, Dhanbad

.....Respondent

(H.E. School Road, Virtipara, Hirapur, Dhanbad-826001.)

APPEARANCE

Shri Arijit Chakraborty, Advocate for the Appellant (s)
Shri A. Roy, Authorized Representative for the Respondent (s)

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

FINAL ORDER NO 77001/2019

DATE OF HEARING : 17 December 2019
DATE OF DECISION : 17 December 2019

S.K.MOHANTY :

Briefly stated, the facts of the case are that as the recipient of taxable service, the appellant was liable to pay Service Tax under Reverse Charge mechanism. During the course of audit for the relevant period, the department had observed that the appellant had short paid. On pointing out such irregularity, the appellant had deposited the Service Tax amount along with interest. However, the department initiated show cause proceedings against the appellant, seeking for confirmation of the Service Tax demand along with interest and for imposition of penalties under various provisions contained in the Finance Act, 1994. The issue arising out of the show cause notice was adjudicated vide order dated 02.11.2015, wherein the original authority had confirmed the adjudged demand proposed for recovery in the show cause notice. Feeling aggrieved with the original order dated 02.11.2015, the appellant had filed appeal before learned Commissioner(Appeals), which was disposed of vide the impugned order dated 23.03.2017, in upholding the order of the original authority. Hence, the appellant has preferred this appeal before the Tribunal.

2. Learned Advocate appearing on behalf of the appellant at the outset submits that the appellant is not contesting the adjudged Service Tax and interest demand confirmed against it. However, he submits that since based on the records maintained by the appellant, the department had observed the irregularities of non-payment of Service Tax, it cannot be said that the appellant is exposed to the penal consequences provided under Section 78 of the Finance Act, 1994, inasmuch as there is no element of suppression, mis-statement etc. with intent to evade payment of Service Tax. Thus, he submits that the impugned order, by imposing penalty under Section 78 of the Act cannot be sustained. With regard to demand of late fee for non-submission of ST-3 returns within the stipulated time, the learned Advocate submits that the show cause notice does not invoke the provisions of section 74 of the Act, and thus, the adjudication order has travelled beyond the scope of show cause notice and accordingly, imposition of fine on the appellant cannot also be sustained.

3. On the other hand, learned Authorized Representative appearing on behalf of the Revenue reiterates the findings recorded in the impugned order.

4. Heard both sides and perused the records.

5. It is an admitted fact on record that based on the books of accounts maintained by the appellant, the audit wing of the Service Tax department had observed the discrepancy of non-payment/short payment of Service Tax by the appellant. So far as invocation of Section 78 of the Act is concerned, the ingredients mentioned therein

namely fraud, suppression, willful misstatement etc. have to be established by the department. The learned adjudicating authority in this case has specifically mentioned that based on the records, maintained by the appellant, the short payment of Service Tax on the GTA service was detected by the department. Thus under such circumstances, the charges of suppression, misstatement etc. cannot be leveled against the appellant, justifying invocation of the provisions of Section 78 of the Act for imposition of penalty. With regard to confirmation of the demand of late fee for delayed filing of ST-3 returns, we find that the show cause notice had not specifically invoked the provisions of section 74 of the Act, which has been invoked for the first time by the adjudicating authority, during the course of adjudication of the matter. It is evident that the adjudication order in this case, has gone beyond the scope of the show cause notice and on that count, imposition of late fee on the appellant cannot be sustained.

6. In view of the above discussions, the impugned order, to the extent it imposed penalty under Section 78 of the Act and the late fee for delayed filing of ST-3 returns is set aside and the appeal to such extent is allowed in favour of the appellant.

(Dictated and pronounced in the open Court.)

Sd/-
(S.K.MOHANTY)
MEMBER (JUDICIAL)

Sd/-
(BIJAY KUMAR)
MEMBER (TECHNICAL)

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