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

REGIONAL BENCH – COURT NO.1

S. Tax Appeal No.75540 of 2018

Arising out of Order-in-Appeal No.43/SH/CE(A)GHY/17 dt. 21/11/2017 passed by the Commissioner (Appeals), CGST, C. Ex & Customs, Guwahati.

Sri Satya Sundar Das
Sukanta Palli, Subhash Park,
P. O. Khowai-799201
Distt. Khowai, Tripura

Appellant (s)

VERSUS

CCE & ST, Shillong
Morellow Compund, M. G. Road,
Shillong, 793001

Respondent (s)

APPERANCE :

Smt. Chandreyee Alam Gupta & S. Das, Advocate for the Appellant
Shri H. S. Abdein, A. C. (A. R.) for the Respondent

CORAM:

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

ORDER NO.FO/77018/2019

Date of Hearing: 20.06.2019
Date of Decision : 20.06.2019

PER P. K. CHOUDHARY :

The instant appeal has been filed by the assessee against the Order-in-Appeal dated 21.11.2017 passed by the Ld. Commissioner (Appeals), CGST & Central Excise, Guwahati, Assam whereby he has sustained the demand of Service Tax of Rs.7,99,054/- alongwith interest and imposed penalty for the period from April 2011 to March 2015.

2. Briefly stated the facts of the case are that the appellant is a provider of taxable services under the category of "Works Contract Service", Commercial & Industrial Construction Service" and "Site Preparation and Cleaning Service" since 2011. The appellant is before

us, being aggrieved by the Order of the Commissioner (Appeals), wherein the demand for short payment of Service Tax on Works Contract Service amounting to Rs. 80,764/-, short payment of Service Tax on Site Formation & Clearance, excavation, earthmoving and demolition amounting to Rs. 33,794/-, payment of Service Tax on Supply of tangible goods of Rs. 1,19,333/- and recovery of Service Tax of Rs. 5,65,253/- for service of construction of road u/s 73A has been sustained.

3. Smt. Chandreyee Alam Gupta and Shri S. Das, Ld. Advocates appeared for the appellant and Sri H.S. Abedin, Ld. Asst Commissioner, appeared for the Revenue

4. The appellant has also filed a supplementary submission and enclosed copies of the calculation sheet of service tax w.r.t Site Formation & Clearance, excavation, earthmoving and demolition" service and furnished copies of the work orders and bills. It has been contended that for some of the work orders, detailed in annexure, the date of the work orders and the service was rendered before 01.07.2012 and since the service was exempted vide Notification No. 17/2005-ST dated 07.06.2005, the demand on account of short payment of service tax is not sustainable. With regard to the demand raised for recovery of Service Tax under Section 73A, the appellant has relied on bank statements, copies of bills, Journal, Site vouchers and other documents to contend that the demand is not sustainable. These documents were not furnished before the Ld. Commissioner (Appeals). I find that the appellant has prayed for re-calculation of the Service Tax liability on the basis of their submissions in the grounds of appeal.

5. The Ld. Departmental Representative reiterated the findings of the Ld. Commissioner (Appeals) and prayed that the appeal be rejected being devoid of any merit.

6. Heard both sides and perused the appeal records.

7. The appellant has submitted calculations which were not before the Ld. Commissioner (Appeals) and prays for re-computation of the Service Tax liability. The Ld. Department Representative fairly agrees that since the computation of tax liability is disputed, the matter be remanded back to the original authority.

8. Considering the facts of the case and as both sides agree that the matter should be remanded to the original authority, I remand the matter back to the original authority to verify the claim of the appellant assessee and decide the issue afresh as per law. The original authority is directed to afford a reasonable opportunity to the assessee to defend its case and the appellant is directed to cooperate with the Department without seeking unnecessary adjournments so that the matter can be decided expeditiously. The appellant shall submit details of tax calculation and documentary evidences in support of their contentions.

The appeal is thus allowed by way of remand in terms of the directions as stated above.

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

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

Pooja