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

REGIONAL BENCH - COURT NO.2

Service Tax Appeal No.75664 of 2019

(Arising out of Order-in-Appeal No.48/Pat/S.Tax/Appeal/2017-18 dated 04.10.2017 passed by Commissioner(Appeals), Central GST & CX, Patna.)

M/s. Shakti Traders
(Main Road, Barbigha, Near Referal Hospital Road,
At & PO Barbigha, District Sheikhpura, Bihar.)

...Appellant

VERSUS

Commissioner of CGST & CX, Patna-I Commissionerate

.....Respondent

(C.R. Building (Annexe), Birchand Patel Path, Patna.)

APPEARANCE

Shri Tarun Chatterjee, Advocate for the Appellant (s)
Shri T. Mondal, Authority Representative for the Respondent (s)

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

FINAL ORDER NO. 77056/2019

DATE OF HEARING : 18 September 2019
DATE OF DECISION : 18 September 2019

P.K.CHOUDHARY :

The facts of the case in brief are that the appellant is a proprietory concern and is a distributor of Unitech Wireless Private Limited, Telenor (India) Communications Private Limited, Telewings Communication Services Private Limited etc. Show Cause Notice dated 16.10.2015 was issued alleging non-payment of service Tax for the period from 2010-11 to 2012-13 (upto June 2012). The adjudicating authority confirmed the demand of Service Tax amounting to Rs.4,71,337/- and appropriated the same from the total amount of Rs.10,12,697/- paid by the appellant assessee against their Service Tax liability as confirmed above. Penalty of Rs.10,000/- each was imposed under section 77(1)(a) and 77(1)(c). Equal amount of penalty was imposed under section 78 of the Finance Act, 1994 and a late fee was also imposed under section 70 of the Finance Act, 1994 read with Rule 7C for delayed filing of ST-3 returns for the period October 2011 to March 2012 and April 2012 to June 2012 totally amounting to Rs.40,000/-. On appeal, the learned Commissioner(Appeals) passed the following order:-

> *"6.2 I, therefore, do not find any valid reason to interfere with the findings of the adjudicating authority and accordingly upheld the impugned Order-in-original except for the penalty imposed under Section 77(1)(c) for failure to produce documents called for by the Superintendent. Accordingly penalty of Rs.10,000/- imposed under Section 77(1)(c) is set aside because I agree with the submission of the appellant that in the later stage, when the case was detected for non-payment of service Tax and also the suppression of fact, the appellant provided the documents called for by the superintendent.*
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> *6.3 The impugned Order-in-original dated 23.06.2016 is modified accordingly and the appeal is disposed of with the above mentioned modification."*

2. The learned Advocate appearing on behalf of the appellant assessee submits that the transaction between M/s.TPCL and other companies with the appellant were on a principal to principal basis and once M/s.TPCL opted to discharge Sales Tax on transfer of ownership of Sim cards and re-charge coupons to customers, there was no need to pay any Service Tax in relation to the same transaction, as such activity did not amount to rendering of services. He further submitted that there was no mens-rea on the part of the appellant and the issue is that of interpretation of provisions of the statute, hence, no penalty should have been imposed. The appellant immediately paid the entire amount of service tax along with interest and filed the ST-III returns. It is the submission of the Ld. Advocate that since the service tax along with interest has been paid much before the issuance of the show cause notice and they are not contesting this before the Tribunal and are only on the issue of penalties imposed upon the appellant by the impugned

order, the same may be set aside. He relied on the decision of the Tribunal in M.K.Telecom v. Commissioner of Central Excise, Rajkot [2012(27) STR 375(Tri.-Ahmd.)].

3. Learned Authorized Representative appearing on behalf of the respondent Revenue justified the impugned orders.

4. Heard both sides and perused the appeal records.

5. I find that the appellant had discharged the service tax liability for the relevant period before issuance of the show cause notice. The interest thereof has also been discharged. I find that the activity rendered by the appellant is of purchasing of prepaid sim cards from M/s. TPCL and selling them to the ultimate customer. For doing so M/s. TPCL receives the amount as commission which according to the Revenue is liable for service tax. I find that the issue rendered in this case pertains to service tax liability on the commission received, which has been a recurring dispute before the Tribunal in various matters. The Tribunal in the case of Idea Cellular has held that it will amount to rendering of services. In my considered view the appellant could have extended the bonafide belief that there is no liability for services rendered during the relevant period.

6. In view of the above discussion, the benefit of section 80 of the Finance Act, 1994 can be extended to the appellant in this case. In fact as per the provision to section 80, I find that the appellant has been able to provide valid reasons for setting aside the penalty imposed under sections 78, 77(1)(a) and section 70 of the Finance Act, 1994. The impugned order to the extent challenged before me, for the imposition of penalties under section 78, 77(1)(a) and section 70 of the Finance Act, 1994 is set aside.

7. The appeal is thus partly allowed.

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

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

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