IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
EAST REGIONAL BENCH : KOLKATA

Service Tax Appeal No.76363 of 2019

(Arising out of Order-in-Original No.13/COMMR/CGST & CE/HWH/Adjn/2018-19 dated 12.03.2019 passed by Commissioner of CGST & Excise, Howrah)

M/s Bengal Beverages Private Limited
Durgapur Expressway, P.IO.-Dankuni Coal Complex, Hooghly-712310

Appellant

VERSUS

Commissioner of CGST & Excise, Howrah
15/1 Strand Road, Kolkata-700001

Respondent

Appearance:

Shri Ankit Kanodia, Advocate for the Appellant
Shri J.Chattopadhyay, Authorised Representative for the Respondent

CORAM:
HON'BLE SHRI P. K. CHOUDHARY, JUDICIAL MEMBER
HON'BLE SHRI P. ANJANI KUMAR, TECHNICAL MEMBER

FINAL ORDER NO.75115/2022

DATE OF HEARING : 08.12.2021
DATE OF PRONOUNCEMENT : 23.02.2022

Per P.K.Choudhary :

The present appeal has been filed by the assessee being aggrieved with the Order-in-Original dated 12th March 2019 passed by the learned Commissioner, where by the demand of service tax of Rs.2,44,41,749/-has been confirmed for the period 2012-13 to 2015-16,along with interest and penalty as proposed in the Show Cause Notice dated 27th March,2018.

2. Briefly stated, the facts of the case are that the appellant is engaged in the manufacture of aerated water and fruit-based beverages classifiable under Chapter 22 of the First schedule to the Central Excise Tariff Act, 1985. An audit of the excise and service tax records was carried out at the premises of the appellant, it was noticed that the Appellant has not paid due service tax under reverse charge mechanism on services received from Rent-a-Cab service providers and expenses booked under the heads 'vehicle

hire charges', 'motor car' expenses and amount paid to director for car hire charges. The above lead to issue of audit memo dated 05th October 2016 to which the Appellant provided detailed reply with workings to show that there was no short payment under rent a cab services received and that the ledgers as identified by the department relates to expenses incurred not against rent a cab service. However, the department proceeded to issue the Show Cause Notice dated 28th April 2018 alleging non-payment of service tax on such services and recovery thereof along with interest and penalty by invoking extended period of limitation and alleging suppression of facts by the Appellant. The appellant by its letter dated 21st August 2018 duly replied to the said show cause – cum – demand notice pointing out inter alia that the ledger of motor car expenses related to miscellaneous expenses incurred for fuel, toll, reimbursement to employees, repair expenses etc. whereas the vehicle hire charges related to expenses of goods transport agency for outward and inward freights on which tax under the head of transport of goods by road agency services has been paid by the Appellant. Further as regards the amounts paid to director for car hire charges, the said amount has already suffered service tax under Rent-a-Cab service and disclosed in ST-3 returns also, as filed by the Appellant. The Appellant further contended that the said show cause–cum–demand notice was substantially barred by limitation. The adjudicating authority, still proceeded to confirm the demand of recovery of Service tax along with interest and penalty as proposed in the show cause cum demand notice. Hence, the present appeal before the Tribunal.

3. Shri Ankit Kanodia, learned Advocate, appeared on behalf of the Appellant. He contended that the demand of service tax under Rent-a-Cab service is not sustainable for the following reasons:

(i) There is no finding as to who the supplier of service is either in the Show cause notice or in the impugned order to confirm the demand under reverse charge mechanism of service tax under Rent-a-Cab service provided as per Notification No. 26/2012-ST dated 20/06/2012.

(ii) That the demand is based only on the assumptions and presumptions of the Ld. Adjudicating authority that the expenses under the motor car expenses ledger relates to expenses incurred by the Appellant on vehicles taken on hire basis by the Appellant and hence any expenditure incurred on such vehicles is to be added to value of Rent-a-Cab service without giving any iota of evidence as to the provider of service and by ignoring all the documents as provided by the Appellant during adjudication stage.

(iii) That the demand under the vehicle hire charges ledger cannot be sustained as the same has suffered tax under GTA services for which copies of ledger along with invoice and consignment copies are also on record and were submitted before the adjudicating authority also.

(iv) That the amounts paid to directors for car hire charges has already suffered tax under rent a cab service which is evident from the reconciliation provided during the audit stage and thus the same cannot be taxed again by the department.

(v) That the Appellant has already provided detailed reconciliation for the same certified by an independent CA before the Adjudicating authority which has been incorrectly interpreted by the Ld. Adjudicating authority.

(vi) That there is no suppression of facts at all by the Appellant and hence the extended period cannot be invoked.

The learned Advocate has also produced copies of the statement showing payment of service tax with challan numbers for car hire charges paid to directors, copies of the statement of summary of GTA service in ST 3 return vis-à-vis the Vehicle hire charges and Copies of the ledger of motor car expenses for the period 2012-13 to 2015-16 along with sample invoice copies. It is his submission that the demand is also barred by limitation as the demand pertains to the period from 2012-13 to 2015-16 whereas the SCN was issued on 21st August 2018 much after the expiry of normal period of limitation.

4. The learned Authorized Representative appearing on behalf of the respondent, justified the order of the lower authority.

5. Heard both sides through video conferencing and perused the appeal records.

6. In the instant case, it is seen that the Adjudicating Authority has confirmed the demand of recovery of service tax without appreciating any of the documents as produced by the Appellant with reply to the show cause notice. From the case records, it is seen that for the expenses incurred under the head motor car expenses, contains miscellaneous expenses for running of motor car including cost of fuel, toll tax, car parking charges, miscellaneous repair charges for car servicing, taxi fare reimbursement to staff whereas the ledger for Vehicle Hire Charges relates to the expenses in relation to the GTA services availed by the Appellant for the transportation of goods to customers of the Appellant. Further there has been no contrary evidence produced before us to deny the above facts. Also from the reconciliations produced, it is clear that the amounts as disclosed by the Appellant for GTA services in its ST 3 returns are much more than the amounts of vehicle hire charges and that there are other ledgers also on which tax has been paid under GTA services. Hence the claim of the department that the amount under vehicle hire charges does not corelate to the amount paid under GTA services cannot be accepted as no visible efforts have been made by the department to corelate the same whereas the Appellant has produced all possible reconciliations for the same and on account of no contrary evidence being produced we are inclined to accept the contentions of the Appellant.

Further it is also observed that the demand was raised under the Rent-a-Cab service under reverse charge mechanism without actually identifying the supplier of service whereas the documents produced as part of appeal paper book and written submission shows the nature of expenses clearly not to be one of Rent-a-Cab service at all. Thus, the deeming fiction adopted by the Ld. Adjudicating authority cannot be sustained and thus, the demand cannot survive on this ground. As regards amount paid to Director for car hire charges, we find that the Appellant has not disputed the service tax liability on said amounts and that the same has been paid in the returns filed by the Appellant, we thus do not find any ground to make any observations on the same. Further, on perusal of records, we find that the demand has been raised for the period 2012-13 to 2015-16 in 2018. No explanation has been furthered by the Department in respect of such gross delay in proceeding with the matter. Therefore, we find that invocation of the extended period of limitation is not justified.

7. In view of the above discussions, the demand for recovery of service tax on Rent-a-Cab service only on assumption and presumptions cannot be sustained is accordingly set aside. Since demand of recovery of service tax is set aside, penalty and interest are also not sustainable.

8. The appeal filed by the Appellant is thus allowed with consequential relief, if any.

(Pronounced in the open Court on **23.02.2022**)

Sd/

(P. K. Choudhary)
Member (Judicial)

Sd/
(P. Anjani Kumar)
Member (Technical)

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