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

REGIONAL BENCH - COURT NO.2

Service Tax Appeal No.77149 of 2018

(Arising out of Order-in-Appeal No.93/S.Tax-II/Kol/2018 dated 12.03.2018 passed by Additional Director General, DGGSTI, Kolkata [Office of the Commissioner of CGST & CX, (Appeal-I), Kolkata].)

M/s. SKP Securities Limited
(Chatterjee International Centre, Level-21, 33A, Jawahar Lal Nehru Road, Kolkata-700071.)

...Appellant

VERSUS

Commissioner of CGST & CX, Kolkata South Commissionerate
.....Respondent
(G.S.T. Bhawan, 180, Shantipally, Rajdanga Main Road, Kolkata-700107.)

APPEARANCE

Shri Nitesh Garg, Chartered Accountant for the Appellant (s)
Shri S.S.Chattopadhyay, Authorized Representative for the Respondent (s)

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

FINAL ORDER NO. 75521/2022

DATE OF HEARING : 12 July 2022
DATE OF DECISION : 12 July 2022

P.K.CHOUDHARY :

The present Appeal has been filed by the Appellant assailing the Order-in-Appeal dated 12.03.2018 passed by Additional Director General, DGGSTI, Kolkata, whereby the Appeal filed by the Department was allowed by way of remand. The facts of the case in brief are that the Appellant is engaged in trading of securities as stock broker and is a member of the Bombay Stock Exchange and the National Stock Exchange as well. They were registered with the Service Tax department under the categories of 'Stock Broking Services', 'Banking and Other Financial Services' and 'Business Auxiliary Services'. An audit was conducted by the Department for the period 2009-10 and 2010-11 and thereafter audit objections were issued and the Appellant filed its reply vide letter dated 30.03.2011. It is the case of the Appellant that owing to the change in the working software, the Appellant made an advance payment of Service Tax of Rs.18,01,346/- in the year 2008-09 and made some adjustments out of the liabilities of Service Tax for the months of February 2009 and March 2009 and some amount adjusted in the months of April 2009 and May 2009. However, Show Cause Notice dated 11.01.2012 was issued on the following grounds:-

(A) The amount of Service Tax to the tune of Rs.12,65,425.00 (Rupees Twelve Lakhs Sixty Five Thousand Four Hundred and Twenty Five only) should not be recovered/demanded from the said assessee under the proviso to Section 73(1) of the Finance Act, 1994.

(B) The amount of interest on the above amount should not be paid by them under Section 75 of the Act.

(C) An interest of Rs.74/- should not be paid by them under Section 75 of the Act.

(D) The amount of interest to the tune of Rs.1,332.00 (Rupees One Thousand Three Hundred and thirty two only) should not be charged from the said assessee under Section 75 of the Finance Act, 1994.

Interest at the appropriate rate should not be charged on the amount of Service Tax so demanded from the assessee under Section 75 of the Finance Act, 1994, read with rule 14 of the Cenvat Credit Rules, 2004.

(E) Penalty under Section 78 of the Finance Act, 1994 should not be imposed upon the said assessee for not paying Service Tax within due date by reasons of willful suppression of facts with intent to evade payment of Service Tax.

2. The Appellant duly complied with the Show Cause Notice and the Adjudicating authority passed the following order:-

i) I drop the demand of Service Tax to the tune of Rs.12,65,425/- only, (Rupees Twelve lakh sixty five thousand four hundred and twenty five) only against M/s. SKP Securities Limited, Chatterjee International Centre, Level 21, 33A, Jawahar Lal Nehru Road, Kolkata-700071 under the impugned show cause notice.

ii) I confirm the demand of interest amounting to Rs.1,406/- (Rs.74/-+ Rs.135/- + Rs.1197/-) for delayed payment of Service Tax and appropriate the same paid by the assessee.

3. Being aggrieved, the Department filed Appeal before the First Appellate Authority on the grounds that the proper verification of statutory documents, proper ascertainment of alleged excess payment of Service Tax was not done by the Adjudicating authority and thus accumulation of purported excess payments and also the purported adjustments towards payment of Service Tax against 'Stock Broking Services' and 'Banking and Financial Services' for the months of April and May 2009 does not appear to be acceptable. The First Appellate Authority allowed the Appeal by way of remand, directing the Adjudicating authority to pass a fresh order after re-examining the matter in terms of the grounds of Appeal. The assessee preferred the present Appeal before the Tribunal.

4. Heard both sides and perused the appeal records. It is apposite to mention the relevant details from the Show Cause Notice:

Sl No.	Period	Amount (in Rs.) incl. Cess	Allegation in the Show Cause Notice
1.	April,2009	1,75.615/-	That the Noticee has not produced the documentary evidence of alleged payment of Service Tax along with cess paid under the category of Banking or Financial Services' and shown such amount in Service Tax for the period 2009-10 as advance payment.
2.	May,2009	25,671/- and interest of Rs.74/-	That in the half yearly Return Noticee has shown service tax of Rs.28,329/- + Rs.566/-

			(Edu.Cess)+ Rs.283/- vide challans No. 00132 whereas actual payment of service tax is Rs.3,507/- on 03.07.2009. Therefore, Noticee has short paid the service tax of Rs.25,671/- and interest of Rs.74/- on delay payment of service tax.
3.	April, 2009 and May, 2009	Rs.4,20,233/- and Rs.6,439,06/-	That the Noticee has not produced the documentary evidence of alleged payment of Service Tax along with Cess paid under the category of 'Brokerage Services' and shown such amount in Service Tax for the period 2009-10 as Advance Payment.
4.	December, 2010	Rs. 135/-	That the Noticee has paid the amount of Rs.4,363/- on 02.04.2011, wrongly availed excess CENVAT Credit but not paid the interest of RS.135/- on such amount.
5.	December, 2010	Rs.1,197/-	That the Noticee has paid the amount of Rs. 38,625/- on 02.04.2011, irregular availment of CENVAT Credit but not paid the interest of Rs. 1,197/- on such amount.
	Total	12,66,831/-	

5. I find that the Ld.Adjudicating authority has meticulously gone into the details of the Appellant assessee and has passed a detailed order before dropping the demand as proposed in the Show Cause Notice. In the discussion and findings, I find that the Ld.Adjudicating authority has observed as under:-

> "III) " Now before considering the merit of the assessee's contention it is imperative to examine whether the amount claimed as excess paid has actually been paid or not. In this regard the assessee have produced copies of all relevant challans evidencing payment of entire amount of service tax paid during April, 2008 to January, 2009. The documents submitted by the assessee clearly establish the payment of entire amount of service tax as shown in ST-3 during the aforesaid period. When the entire amount of tax is supported by documentary evidence the amount of excess tax paid does not warrant any additional evidence since such amount of excess paid during this period."

iv) " Further, I find the assessee have adjusted such excess paid service tax during four months from Feb,09 to May,09 and accordingly declared the same in the ST-3 return every time. The similar adjustment of excess paid tax during preceding two months, Feb and March,2009 has not been objected by the departmental audit conducted for the year 2008-09. I also find that afer adjustment against tax liability for the months of February and March, 2009 the balance amount of excess paid tax amounting to Rs.14,73,258.21 has been carried forward to the next FY.2009-10. The assessee in this connection has submitted Chartered Accountant's Certificate dated 31.12.2012 giving break-up of the consolidated amount of Rs. 26,100,030/- shown under "Advances recoverable in cash or in kind" as per Schedule-7 of the Balance Sheet which clearly shows that it included the amount of Rs. 14,73,258/- as advance service tax paid."

v) "The sole allegation if short payment of service tax by the assessee is not substantiated on any external evidence apart from the allegation that no documentary evidence could be found on scrutiny. As the advance payment of service tax is clearly established on records the charge of short payment of service tax against the assessee is therefore, not sustainable."

vi) "The allegation of suppression of facts is also not justifiable in view of the facts that the assessee have clearly indicated in ST-3 the adjustment of service tax liability for the months of April and May,2009 from the advance paid service tax and has also declared in their audited Balance Sheet such advance paid tax remaining in balance after adjustment of tax liability for last two months of FY, 2008-09 i.e. , Feb 09 and March, 09. So I find no short payment of service tax by the asseessee during April and May,2009 on "Banking and other Financial service" and "Brokerage Service"

6. Since the Order-in-Appeal was passed on 12.03.2018 and none of the parties have been able to indicate whether a *de novo* order has already been passed by the Adjudicating Authority pursuant to the Order-in-Appeal. In the event such *de novo* order has already been passed, it would be appropriate for the parties to consider such *de novo*

order and take steps in accordance with law. Therefore, in the facts and circumstances of the case, it would be appropriate to remand this Appeal to the Ld.Adjudicating authority to pass a *de novo order* after following the principles of natural justice. The Appeal is allowed by way of remand to the Ld.Adjudicating authority.

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

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

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