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

REGIONAL BENCH - COURT NO.1

Service Tax Appeal No.315 of 2011

(Arising out of Order-in-Original No.02/COMMR/CE/KOL-III/2011-12 dated 06.04.2011 passed by Commissioner of Central Excise, Kolkata-III Commissionerate.)

Commissioner of Service Tax, Kolkata
(Kendriya Utpad Shulk Bhawan, [3rd Floor], 180, Shantipally, Rajdanga Main Road, Kolkata-700107.)

...Appellant

VERSUS

M/s. Western Transit Caterer

.....Respondent

(1/230, Naktala Road, Kolkata-700047.)

APPEARANCE

Shri J.Chattopadhyay, Authorized Representative for the Revenue
NONE for the Respondent (s)

CORAM: HON'BLE SHRI ASHOK JINDAL, MEMBER(JUDICIAL)
HON'BLE SHRI RAJEEV TANDON, MEMBER(TECHNICAL)

FINAL ORDER NO. 75098/2023

DATE OF HEARING : 13 March 2023
DATE OF DECISION : 13 March 2023

ASHOK JINDAL :

Revenue is in Appeal against the impugned order, wherein the Ld.Adjudicating authority refrained from imposing penalty under Section 76 of the Finance Act, 1994.

2. The facts of the case are that the Respondent was providing 'Catering and Cleaning Services', but were not paying Service Tax. On the basis of intelligence, it was revealed that the Respondent was providing taxable services and not paying Service Tax thereon. Therefore a Show Cause Notice was issued to the Respondent to demand Service Tax along with interest and to impose penalties under

Section 77 and 78 of the Act. In reply to the Show Cause Notice, it was stated by the Respondent that they were under an impression that whatever services of catering has been provided by them i.e. in-house and no outdoor catering they are providing. Moreover, the Respondent was providing 'Guest House Services' to their clients. On this premise, the Ld.Adjudicating authority confirmed the demand of Service Tax along with interest and imposed penalty under Section 78 of the Act. Aggrieved from the said order, Revenue is in Appeal for not imposing penalty under Section 77 of the Act. Hence the present Appeal.

3. Heard the ld.Authorized Representative for the Revenue.

4. Considering the fact that during the impugned period, the leviability of Service Tax on 'Guest House Services' as catering and cleaning was under *bona fide* belief of the Respondent, is that it was not taxable.

5. In that circumstances, giving benefit of Section 80 of the Finance Act, 1994 we refrain from imposing penalty under Section 77 of the Act. Accordingly, we do not find any merit in the Revenue's Appeal, the same is dismissed.

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

Sd/
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/
(RAJEEV TANDON)
MEMBER (TECHNICAL)

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