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

REGIONAL BENCH – COURT NO.2

Service Tax Appeal No. 75966 of 2018

(Arising out of Order-in-Appeal No.320/ST-I/KOL/2017 dated 23.11.2017 passed by Commissioner of CGST & CX, (Appeal-I), Kolkata.)

M/s. Command Security
(751, Lake Town, Block A, Kolkata-700089)

Appellant

VERSUS

Commissioner of CGST & CX, Kolkata North Commissionerate
(GST Bhawan, 180, Shantipally, Rajdanga Main Road, Kolkata-700107)

Respondent

APPEARANCE :
Mr. Sushil Goyel, CA for the Appellant
Mr. A. Roy, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)

FINAL ORDER NOs.75308/2023

Date of Hearing : 2nd May 2023
Date of Decision : 2nd May 2023

PER R. MURALIDHAR

The Appellant is a provider of Security Services to various corporates. Based on investigation taken up, a demand of Rs.17,43,346/- was made on the Appellant on ground that Service Tax was not paid by them for the period 2006-07 to 2010-11. The investigating officials collected cheques for Rs.10,00,000/- in the course of investigation. Subsequently, after due process, the Adjudicating Authority confirmed the demand and appropriated only Rs. 5,00,000/- in the OIO passed by him on 24/12/2012. Aggrieved by this OIO, the Appellants filed the Appeal before Commissioner (Appeals) and he rejected their appeal. The Appellants have also paid interest of Rs. 5,98,748/- on 27/03/2019. When Sabka Vishwas Scheme was announced, the Appellant opted for the same. Since they had paid the entire confirmed amount along with substantial interest, they have filed SVLDRS-1 submitting that against the confirmed demand of Rs. 17,43,346/- they have pre-deposited Rs. 24,37,344/- under this Scheme.

In the normal course, the Department should have issued them the Discharge Certificate, SVLDRS-4. However, the Department has considered only an amount of Rs. 5,00,000/- appropriated in the OIO as deposited amount and issued SVLDR-2 demanding further Rs.23,002. The Appellant vide SVLDR-2A has submitted that they are not agreeing with the further demand of Rs.23,002/- in the SVLDRS-2 Form. After this, no further action was taken by the Department and they were not issued the SVLDRS-4 Discharge Certificate.

2. The Learned Chartered Accountant appearing on behalf of the Appellant makes the above submissions and brings evidence in the form of GAR-7 Challans and copies of SVLDRS-1, SVLDRS-2 and 2A in support of his submissions and prays that considering all these facts, the present Appeal may be allowed. He further submits that they are not contesting the confirmed demand and interest already paid by them and they are only contesting the penalties imposed on them.

3. The Learned AR reiterates the findings of the lower authorities and submits that while the Appellant has opted to take advantage of SVLDR Scheme, they did not Appear in the Personal Hearing granted when the Department has raised the demand for balance of Rs.23,002/-. Therefore, the Department was correct in rejecting their SVLDRS Application.

4. Heard both sides and perused all the documents.

5. This is a peculiar case where the Appellant had paid the entire amount of confirmed demand of Rs.17,43,346/- along with interest of Rs.5,98,748/- and also had made some more pre-deposit at the time of filing the Appeal before the Tribunal. Under the SVLDR Scheme for the amount confirmed against this Appellant, mere payment of about Rs.6,00,000/-would have been enough to get the benefit of this scheme. The Department failed to note that at the very first stage they have paid Rs.10,00,000/- whereas only Rs.5,00,000 was appropriated in the OIO and also noted as deposited by the Appellant in the SVLDRS-2, because of which the Appellant was denied the benefit of the Scheme.

6. As the Appellant is not contesting the Service Tax and interest and pre-deposit already paid, the same are not part of the present Appeal for the present decision.

7. The penalties imposed are set aside. No further amount is recoverable from the Appellant. No refund accrues to the appellant.

8. The Appeal is disposed of thus.

(Dictated and pronounced in the open court.)

Sd/-

(R. Muralidhar)
Member (Judicial)

Pooja