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

REGIONAL BENCH – COURT NO.2

Service Tax Appeal No. 75851 of 2019

(Arising out of Order-in-Appeal No.128/ST/RKL-GST/2018 Dated 31.08.2018 passed by Commissioner (Appeals), GST, CX & Customs (Bhubaneswar).)

M/s. Seeta Enterprises
(Prop: Shri Suresh Joshi
Main Road, Rajgangpur, Sundergarh, (Odisha-770017)

Appellant

VERSUS

Commissioner of CGST & CX, Bhubaneswar Commissionerate
(C. R. Building Rajaswa Vihar, Bhubaneswar, Odisha-751007)

Respondent

APPEARANCE :
Mr. Manoj Kumar Agarwal, Advocate for the Appellant
Mr. S. S. Chattopadhyay, Authorized Representative for the Respondent

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

FINAL ORDER NO.75445/2023

Date of Hearing : 12 May 2023
Date of Decision : 12 May 2023

PER R. MURALIDHAR

The Appellants were issued Show Cause Notice on the ground that the Service Tax paid by them and accounted for by them in the ST-3 Returns did not tally with the turnover shown in the Profit & Loss Account. The Appellant has given a complete details of the services provided by them in the Service Tax Return and has also produced a copies of the Chartered Accountant Certificate before the lower Authorities and also before this Tribunal. From this certificate, it gets clarified that the Appellant has been accounting for the turnover under two headings in the ST-3 Returns whereas in the Profit & Loss Account, they were accounting for the same under a single heading. The Department has failed to note that turnover accounted for and Service Tax paid are more or less matching. Even from the Para 4.4 of the OIO, it gets clarified that the Appellants have given the full details of ST 3 Returns vis-à-vis the turnover shown by them in the Profit & Loss Account. The Table given at Para 4.4 is reproduced below:-

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AS PER ST-3 RETURN					As per P & L Account	Difference
Year	BAS	G & F Service	S. Tax	Total	BAS	(in Rs.)
2010-11	1,54,95,772/-	20,28,300/-	18,04,981/-	1,93,29,053/-	1,93,29,051	2
2011-12	2,36,85,520/-	28,90,033/-	27,37,283/-	2,93,12,836/-	3,03,87,170	10,74,334/-
2012-13	1,84,04,004/-	18,86,657/-	25,07,925/-	2,27,98,586/-	2,27,98,595/-	9
2013-14	2,39,74,912/-	15,14,205/-	31,50,457/-	2,86,29,574/-	2,86,39,577/-	3
Total	8,15,60,208/-	83,19,195/-	1,02,00,646/-	10,00,80,049/-	10,11,54,393/-	10,74,344/-

2. From above Table, it is seen that the Appellant is yet to explain the non inclusion of the turnover Rs.10,74,344/- while paying the Service Tax.

3. The Learned Counsel submits that this is on account of reimbursable expenses received by them from the clients and hence, the same was not liable for Service Tax payment. The Learned Counsel prays that the Appeal may be allowed.

3. The Learned AR reiterates the findings of the Lower Authorities.

4. Heard both sides and perused the documents.

5. After going through the documentary evidence submitted by the Appellant, it is clear that except for Rs.10,77,344/-, the balance Service Tax payment done by the Appellant seems to be in order when the ST 3 Returns and turnover as per Profit & Loss Accounts are compared. From the documentary evidences submitted by the Appellant and the facts recorded in the OIO, it gets clarified that the Appellants have able to be satisfactorily explain the Service Tax paid by them during the period in question. However, in the case of Rs.10,74,344/- their claim that the same is on account of reimbursable expenses and hence not liable for Service Tax is required to be verified with documentary evidence.

6. Their Appeal except for the liability, if any, for the Service Tax on the turnover of Rs.10,74,344/- is allowed.

7. I remand the matter to the Adjudicating Authority for the limited purpose of conducting verification of the documentary evidence to be submitted by the Appellant in respect of the turnover of Rs.10,74,343/- being claimed as reimbursable expenses. If it is held that Service Tax is payable on this turnover, the same is required to be paid by the Appellant with interest. The penalty on the same stands waived as the issue is that of interpretation.

8. Appeal partly allowed as per the above terms.

(Dictated and pronounced in the open court.)

Sd/-

(R. Muralidhar)
Member (Judicial)

Pooja