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

Service Tax Appeal No. 98 of 2010

(Arising out of Order-in-Original No. 32/Commissioner/CE/Haldia/Adjn/2009 dated 24.12.2009 passed by Commissioner of Central Excise, Haldia).

Commissioner of Central Excise, Haldia,
Haldia Commissionrate, 25 Princep Street, Kolkata-700072.

...Appellant (s)

VERSUS

M/s Tata Metaliks Ltd.,
P.O.- Samraipur, Kharagpur, Dist.-West Midnapore,
West Bengal-721201.

. ..**Respondent(s)**

With

Service Tax Appeal No. 108 of 2010

(Arising out of Order-in-Original No. 32/Commissioner/CE/Haldia/Adjn/2009 dated 24.12.2009 passed by Commissioner of Central Excise, Haldia).

M/s Tata Metaliks Limited,
P.O.- Samraipur, Kharagpur, Dist.-West Midnapore,
West Bengal-721201.

...Appellant (s)

VERSUS

Commissioner of Central Excise, Haldia,
Haldia Commissionrate, 25 Princep Street, Kolkata-700072.

. ..**Respondent (s)**

APPERANCE :
Shri A. Roy, Authorized Representative for the Appellant/Revenue
Shri Avishek Ballodia, Chartered Accountant for the Respondent/Assessee

CORAM:
HON'BLE MR. P. K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. K. ANPAZHAKAN MEMBER (TECHNICAL)

FINAL ORDER No...75500-75501/2023

DATE OF HEARING : 08.05.2023

DATE OF PRONOUNCEMENT: 18th May, 2023

PER K. ANPAZHAKAN :

Briefly stated facts of the case are that the Appellant is registered for GTA service under reverse charge (RCM), in Haldia Commissionerate. While paying service tax for some months during

2007/2008, they have wrongly mentioned the location code of Kolkata Commissionerate (SB0302) instead of Haldia Commissionerate (700602)]. The department construed this mistake as non-payment of service tax in Haldia Commissionerate. Accordingly, a show cause notice dated 24/10/2008 was issued to the Appellant, demanding service tax of Rs 57,24,138/- along with Education Cess, Higher Education Cess etc. totally amounting to Rs 58,95,860/-. The said Notice was adjudicated and the demand was confirmed along with interest under section 75 of the Finance Act and penalty under section 76 of the Finance Act was also imposed vide order dated 24/12/2009. Aggrieved against the impugned order, the Appellant is before us.

2. In their submissions, the Appellant stated that Service Tax liability under RCM on GTA services has been deposited by the Company in the account of Kolkata Commissionerate (AABCT1389BST002) instead of Haldia Commissionerate (AABCT1389BST001). This has happened in the following ways

(i) Mentioning of wrong service tax registration no. AABCT1389BST002 in the payment challan for two months i.e. January, 2008 and June 2007.

(ii) Mentioning of wrong location code [i.e. Kolkata Commissionerate code (SB0302) instead of Haldia Commissionerate Code (700602)] in the payment challan from May, 2007 to February, 2008.

3. They contended that Service Tax liability on GTA service arising in Haldia Commissionerate (AABCT1389BST001) but inadvertently paid in Kolkata Commissionerate (AABCT1389BST002) can be adjusted as per Trade Notice No. 03/2014-S.T dated 10th July, 2014 issued by Cochin

Central Excise Commissionerate and the Appellant cannot be asked to pay service tax again. The Trade Notice recognizes that mistake may happen in remittance of service tax against wrong accounting heads or incorrect registration numbers and has clarified that such matters should be sorted out with the P.A.O. and the assesse should not be asked to pay Service Tax again.

4. The relevant portion of Trade Notice is reproduced below:

Sub: Ratification of remittances made against wrong accounting code and or wrong STC Code / C.Ex. Registration Number Procedure Regarding.

There has been number of representations from registered service providers/receivers and Central Excise assessee for rectification of mistakes occurred during remittances of Service Tax or Central Excise duty against wrong accounting heads and or incorrect registration numbers.

Central Board of Excise & Customs vide S.T. Circular No. 58/7/2003(F. No. 157/2/2003 Cx. A) dated 20/05/2003 has clarified tht in such instances the matter should be sorted out with the P.A.O. and the assessee need not be asked to pay Service Tax again. The transfer entries have to be effected by the PAO. As per Pr. Chief Controller of Accounts, New Delhi’s letter NO. Coord/2(1)/76/e-PAO(Chennai)/13-14/159 dated 04/09/2013 and the Civil Accounts Manual of the PAP, read with letter Chord/2(8)/Cex/13-14/224 dated 15/01/2014, even for previous years.

The instances, resulting in remittances against wrong Head of accounts/STC number/C.Ex. Registration numbers are cited below:

1. ……………………………………..
2. 2…………………………………………
3. Service Tax has been paid against the STC number of another assessee/same assessee's (having multiple registrations) different registration number.

4…………………………………

5…………………………………..

In such instances, in order to ensure uniformity and to avoid hardships to the assessees, the following procedure is prescribed to be followed by the assessees and the field formations.

Case 1. The assessee should represent (Through Range and Division) to the Commissioner of Central Excise and Service Tax, describing the mistake occurred/ reasons for such errors alongwith certified copies of the remittance challans. ST-3 Returns for the relevant period and any other document pertains to the issue to establish the genuine mistake and to ratify the error.

Case 2. Same as above.

Case 3. The assessee should obtain a no objection Certificate from the assessee or any other person against whose registration number to which the wrong remittances have been made by e-payment to transfer the amount from their registration number, certified by the concerned Range Officer of Central Excise/Service Tax that the said amount has not been utilized or paid by him and does not surface in his ledger (Book of accounts) and attach with the representation besides the documents.

…………………………..

5. The Appellant stated that the Trade Notice clearly lays down that mistake in remittance of service tax in a difference service tax registration of same assesse is a matter of internal adjustment at department's end and the assesse cannot be saddled with demand of service tax again.
6. The Appellant further stated that Service Tax paid under different registration but by the same company cannot tantamount to non-payment of service tax and no demand can be raised in respect of the same.
7. In this regard, they placed their reliance on the following decisions.

7.1 Welspun Corp Ltd., Vs. C.C.E. & S. T.0 Rajkot-2023(2) TMI 780-CESTAT, Ahmedabad. In this cae, the Tribunal Ahmedabad was dealing with service tax liability which was wrongly paid in service tax registration of Head office instead of ST registration of manufacturing unit. The Tribunal relied on Trade Notice No. 03/2014-S.T. dated 10 July 2014 issued by Commissioner of Central Excise, Customs and Service Tax, Cochin Commissionerate read with Circular No. 58/7/2003(F.No.157/2/2003 Cx. A) dated 20/05/2003 and held that the service tax paid under different registration but by the same company cannot be tantamount to non-payment of service tax and Revenue was given liberty to make necessary adjustment in their account if required.

7.2 The relevant portion of decision is reproduced below.

> 4. We have carefully considered the submission made by both sides and perused the record. We find that in the present case the demand was confirmed only for the reason that the

appellant at their Anjar Unit had had not paid the service tax on services received from abroad on reverse charge basis. However, there is no dispute as the same was admitted in the show cause notice as well as in the impugned order that the service tax of Rs.78,17,225/- was deposited by the appellant's head office at Mumbai under different registration number of input service distributor. The appellant's Anjar unit is not a separate entity as the same is part of a single entity i.e. Welspun Gujarat Stahi Rohren Ltd., which is now known as Welspun Corp Ltd. Therefore, the payment made by head office under different registration number cannot be demanded from the Appellant's Anjar Unit and if at all there is discrepancy of different registration of head office, the department could have adjusted service tax paid by the head office against the service tax due of Appellant's Anjar Unit.

8. The Ld Departmental Representative reiterated the findings of the adjudicating Authority in the impugned order. Regarding the Department's appeal, he stated that penalty under section 76 is imposable for not paying service tax in due time. Penalty under section 77 is imposable for not taking Registration from proper officer.The Appellant has not taken registration under GTA service, as recipient and hence penalty under section 77 is imposable.

9. Heard both sides and gone through the appeal records.

10. We find that the Appellant has discharged their Service Tax liability under RCM on GTA services. They have deposited the service tax in the account of Kolkata Commissionerate (AABCT1389BST002) instead of Haldia Commissionerate (AABCT1389BST001). The

mistake in remittance of service tax in a difference service tax registration of the same assesse is a matter of internal adjustment at department's end and the assesse cannot be saddled with the demand of service tax again. This clarification has been issued by Board in Circular No 58/07/2003 dated 20/05/2003 and communicated to the trade vide Trade Notice No 03/2014 dated 10/07/2014 by Cochin Commissionerate.

11. From the above circular it is clear that the discrepancy such as payment of service tax under wrong registration can be adjusted against the correct registration for which the service tax is actually due. Accordingly, in the light of the above circular, the department could have made the necessary adjustment instead of raising the demand on the appellant.

12. We find that this issue has been considered in various decisions/judgments which are cited by the appellant in their submissions. Some of the decisions are reproduced below:-

12.1 Auro Pumps Pvt. Ltd., Vs. Union of India 2017 (7) TMI 24- Gujarat High Court- in this case, the duty is said to have been paid under incorrect assessee code i.e. Code no. 001 instead of Code No. 002. The Hon'ble High Court held that when authorities' stand became very clear no demand of duty or any sum payable from the petitioners so far as assessee code No. 001 is concerned and when the authority has also knowledge that there was a mistaken payment made under challan, which contained incorrect code i.e. Code no. 001, though it belonged to present assessee, who also has Code No. 002 also and two unequivocally intended to make payment demand, which was payable to him and which was paid, though mistakenly under wrong code i.e. Code no. 001, could not have been subjected to technical defect on the part of authority, so as to saddle with liability. The demand was set aside and the appeal was allowed.

12.2 Devang Paper Mills Pvt. Ltd., Vs. UOI [2016 (1) TMI 389-GUJARAT HIGH COURT], It was held that:-

a. Whatever be the accounting difficulty, when undisputed fact is that the petitioner did pay a certain excise duty, merely mentioning wrong code in the process, cannot result into such harsh consequence of the entire payment not being recognized as valid, incurring further liability of repayment of the basic duty with interest and penalties. Such amount was deposited by the petitioner with the Government of India and it was duly credited in the Government account. It is not even the case of the respondents that the petitioner had any other code by the number ADDCD7232FEM001 and for which there was separate manufacturing activity inviting separate duty liability. Indisputably, thus, the petitioner had singular duty liability for which the actual payment was also made. Under the circumstances, the impugned communication dated 05.05.2015 and notice dated 21.07.2015 are quashed. The respondents are directed to give credit of the duty paid by the petitioner for a sum of Rs.22.15 lacs by making necessary accounting entries on the basis that the same was paid at the relevant time. If thereafter any sum remains unpaid, it would be open for the Department to take further action in accordance with law.

The petition was disposed of in the above terms.

13. The above decisions cited by the Appellant are squarely applicable in this case. In view of the above cited decisions, Board Circular and Trade Notice issued by Cochin Commissionerate, we hold that the demand of service tax, Education Cess, etc along with interest under section 75 of the Finance Act 1994, confirmed in the impugned order is not sustainable and accordingly set aside.

14. We observe that Penalty under Section 76 of the Finance Act, 1994 is not imposable in this case, since service tax has already been paid to the government account. Penalty under Section 76 of the Finance Act 1994 is imposable only when service tax has not been paid to the Government Account.

14.1 The relevant portion of Section 76 of the finance Act 1994 during the material time is reproduced below.

"76. Penalty for failure to pay service tax-Any person, liable to pay service tax in accordance with the provisions of section 68 or the rules made thereunder, who fails to pay such tax shall pay in addition to paying such tax, and interest on that tax in accordance with the provisions of Section 75. A penalty which shall not be less than one hundred rupees for every day during which such failure continues but which may extend to two hundred rupees for every day during which such failure continues, so, however, that the penalty under this clause shall not exceed the amount of service tax that he failed to pay."

14.2 In this case, service tax has already been paid to the Government Account albeit in Kolkata Commissionerate instead of Haldia Commissionerate. It is not the case of the department that service tax was not paid at all. Accordingly, we hold that the provisions of Section 76 of the Finance Act 1994 are not applicable in this case and hence the penalty imposed under section 76 is set aside.

15. Penalty under Section 77 of the Finance Act, 1994 is not imposable in this case, since non mentioning of GTA services in the service tax registration is a merely procedural lapse. Hence Department's appeal is not sustainable.

16. In view of the above discussion, we set aside the impugned order and allow the appeal filed by the Appellant and dismiss the appeal filed by the Department.

(Pronounced in the open court on…18th May, 2023…)

Sd/-

(P. K. Choudhary)
Member (Judicial)

Sd/-

(K. Anpazhakan)
Member (Technical)

Tushar