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

REGIONAL BENCH – COURT NO.1

Service Tax Appeal No. 70877 of 2013

(Arising out of Order-in-Original Appeal No.39/COM/ST/SLG/12-13 dated:26.04.2013 passed by Commissioner of Customs, Central Excise & Service Tax, Siliguri Commissionerate)

M/s Mungipa Tradelinks Pvt. Ltd.,
(Singtam Main Road, Singtam Bazar, East Sikkim-737132)

...Appellant

VERSUS

Commr. of CGST & CX, Siliguri Commissionerate.
(C R Building, Haren Mukherjee Road, Hakim Para, Siliguri-734001)

...Respondent

APPERANCE :

None for the Appellant
Mr. Joydip Chattopadhyay, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. ASHOK JINDAL MEMBER(JUDICIAL)
HON'BLE MR. K. ANPAZHAKAN MEMBER (TECHNICAL)

FINAL ORDER No……75574/2023

DATE OF HEARING : 30th May, 2023

DATE OF PRONOUNCEMENT: 06.06.2023

PER K. Anpazhakan :

Briefly stated facts of the case are that the appellant had constructed a factory complex for M/s. Torrent Pharmaceuticals Ltd. at East Sikkim. During the period from 18.03.2009 to 15.09.2009, they have received Rs 1,72,92,377/- from their client, but did not pay service tax . Subsequently, they have taken registration but, found to have short paid service tax on various occasions. Accordingly an investigation was initiated by the officers of Sikkim Commissionerate and a show-cause notice dated 29.08.2011 was issued demanding Service Tax as below:

(i) Rs 49,81,688/- under works contract service

(ii) Rs 23,420 under Business Auxiliary Service

(iii) Rs. 1,18.054 under Goods Transport Agency service

2. The said notice was adjudicated by Commissioner vide Order-in-Original No. 39/COM/ST/SLG/12-13 dated:26.04.2013, wherein he has confirmed the demands raised in the notice. He also demanded interest and imposed penalties. Aggrieved against the impugned order the appellant is before us.

3. In their submissions, the appellant stated that they have paid the entire service tax demanded in the notice along with interests on 03.06.2011, ie, before issue of the Notice. The payment has been accepted by the adjudicating authority and recorded in the findings of the order-in-original dated:26.04.2013. In spite of the payment, the adjudicating authority invoked extended period alleging suppression of fact and imposed penalty equivalent to the duty demanded under section 78 of the Finance Act 1994.

4. The appellant stated that they have not suppressed any information from the department. There was no intention to evade payment of Service Tax. When the liability of Service Tax was pointed out by the departmental officers, they have paid the entire Service Tax along with interest. Since, there was no intention to evade payment of Service Tax, penalty is not imposable under Section 78 of the Finance Act, 1994. Accordingly, they requested for setting aside the penalty. Later, they have paid 25% of the penalty imposed in the impugned order, under protest.

5. The Ld. Departmental Representative reiterated findings of the adjudicating authority in the impugned order.

6. Heard both sides and perused the appeal records.

7. We observe that the Appellant has not disputed their service tax liability. They have paid the entire Service Tax along with interest and the same has been appropriated by the adjudicating authority in the impugned order. The Appellant is before us mainly for the penalties imposed. It is their argument the Appellant stated that they have paid the tax before issue of the notice and hence as per section 73(3) of the Finance Act, 1994, the notice should not have been issued. Also, there is no fraud or suppression of fact involved and hence penalty equal to the duty demanded under section 78 of the Finance Act, 1994, should not have been imposed.

8. We observe that the Appellant has not paid the service tax on their own. The tax was paid only after initiation of investigation by the department. During the course of investigation , the Appellant has not cooperated with the

department. They have furnished wrong information to the investigating authorities on various occasions. we observe that the adjudicating authority has given a finding regarding suppression of facts involved in this case in the impugned order, which is reproduced below:

> *"….It appears that the notice raised periodical bills and received gross payment of Rs.1,72,92,377/- (Rupees One Crore Seventy Two Lakhs Ninety-two Thousand three hundred Seventy Seven) from M/s Torrent Pharmaceuticals Ltd. during the period from March 2009 to September 2009 towards the taxable service rendered by the notice as "Work Contract Service" to their client but did not pay the service tax into the Government account within the stipulated time as per the statue.*
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> *It is evidently proved that the notice received gross taxable service amount of Rs.1,72,92,377/-(Rupees One Crore Seventy Two Lakhs Ninety-two Thousand three hundred Seventy Seven) and evaded payment of Service Tax amounting to Rs.7,12,446/- (Rupees Seven Lakhs Twelve Thousand Four Hundred Forty Six only) during the period from 18.03.2009 to 30.09.2009 before taking Service Tax registration.*
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> *It is pointed out on scrutiny of ST-3 returns submitted by the notice that they received gross value of taxable service an amount of Rs.1,48,11,409/-(Rupees One Crore Forty Eight Lakhs Eleven Thousand Four Hundred Nine) and Service Tax comes to Rs.6,10,230/-(Rupees Six Lakhs Ten Thousand Two Hundred Thirty) and deposited into government account under Challan No.03 dated 05.04.2010 in the month of April 2010 which is shown in the ST-3 return for the half-yearly period from* ***"April-2010 to September 2010".*** *Again they deposited an amount of Rs.6,10,230/- (Rupees Six Lakhs Ten Thousand Two Hundred Thirty) towards gross value of taxable service received by them an amount of Rs.1,48,11,366/- (Rupees One Crore Forty Eight Lakhs Eleven Thousand Three Hundred Sixty Six) under the said TR-6 Challan i.e. Challan No.03 dated 05.04.2010 for the month of March 2010 which reflects in the periodical ST-3 return for the period* ***"October 2009 to March***

2010". *They have shown same amount and same Challan and date for two consecutive periodical ST-3 returns without actually depositing the Service Tax into the credit of government account.*

It is observed from the final payment of certificate of M/s Torrent Pharmaceuticals Ltd as well as Bank Statement of the said notice that they received gross service value of Rs.37,03,264/- (Rupees Thirty Seven Lakhs Three Thousand Two Hundred Sixty Four only) during the month of April 2010 for the Service receiver and tax liability comes to Rs.1,46,537/- (Rupees One Lakhs Forty Six Thousand Five Hundred Thirty Seven only) but they did not pay Service Tax for the month of April 2010 and purportedly shown the said Challan i.e.. Challan No.03 dated 05.04.2010 for deposition of Service Tax of Rs.6,10,230/- twice their ST-3 returns, once for the period ***"October 2009 to March 2010"*** *and* ***"April-2010 to September 2010".*** *It is also learnt that the notice did not file or submit revised return under the provision of* ***Rule 7(B) of Service Tax Rule 1994 as amended, in case of genuine mistake/error.***

It is established that the notice willfully/knowingly presented the same i.e..Challan No.03 dated 05.04.2010 for two consecutive periodical returns with sole intension to mislead the department and indulged in fraud, willful mis-statement and mis-declaration of the taxable value and deposit of Service Tax in their half yearly ST-3 return.

9. The above findings of the adjudicating authority indicate that the Appellant tried to mislead the investigation .The Appellant has been receiving money from their client for the services rendered, but failed to pay service tax. From the statements recorded, it is evident that the Appellant was aware of the service tax liability on the services rendered by them. Thus, there was an intention to evade payment of service tax on the part of the appellant. Accordingly, we hold that penalty has been rightly imposed by the adjudicating

authority under Section 78 of the Finance Act. Since the entire tax confirmed in the impugned order has already been paid, the adjudicating authority has given the option of payment of 25% of the tax amount as penalty. We find that the appellant had already paid the 25% of the duty as penalty, albeit 'under protest'. Thus, they have complied with the payment of duty and penalty as determined in the impugned order.

10. In view of the above discussion we uphold the impugned order passed by the adjudicating authority and dismiss the appeal filed by the Appellant.

(Pronounced in the open court on…06.06.2023….)

Sd/-

(Ashok Jindal)
Member (Judicial)

Sd/-

(K. Anpazhakan)
Member (Technical)

Pinaki