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

REGIONAL BENCH – COURT NO.2

Service Tax Appeal No. 77558 of 2018

(Arising out of Order-in-Appeal No.140/RAN/2018 Dated 19.03.2018 passed by Commissioner (Appeals), CGST & Central Excise, Ranchi.)

M/s. Kashi Prasad Kanoi
(Near Bihar Club, Kutchery Road, Ranchi-834001)

Appellant

VERSUS

Commissioner of CGST & Central Excise, Ranchi
(Central Revenue Building, 5A-Main Road, Ranchi-834001)

Respondent

APPEARANCE :
Ms. Jyoti Todi, CA for the Appellant
Mr. A. Roy, Authorized Representative for the Respondent

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

FINAL ORDER NO.75689/2023

Date of Hearing : 14 June 2023
Date of Decision : 14 June 2023

PER R. MURALIDHAR

The Appellant was issued Show Cause Notice on the ground that they had to pay Service Tax on reimbursable charges as well as on account of TDS deducted by them. The Appellant submitted before the Adjudicating Authority that they were not required to pay the Service Tax on reimbursable charges and relied on various decisions on this account. In respect of the Service Tax on TDS deducted by them, they submitted that amount of Rs.92,602/- stands paid along with interest much before the issuance of Show Cause Notice. However, the Adjudicating Authority had confirmed the entire demand of Rs.4,43,798/- along with interest. He also appropriated the Service Tax of Rs.92,602/- along with interest of Rs.49,479/- paid by the Appellant. He also imposed penalty of Rs.4,43,798/-. Being aggrieved by the OIO, the Appellant filed their Appeal before the Commissioner (Appeals). The Commissioner (Appeals), after going through the factual matrix and statutory provisions and case law, set aside the demand of Rs.3,51,196/- on account of the reimbursable expenses. He has also made a note that in respect of the Service Tax demand of Rs.92,602/- on TDS amount, the same was paid by the Appellant along with interest before issue of Show Cause Notice and these amounts have already been appropriated by the Adjudicating Authority in the OIO. However, he has confirmed the penalty of Rs. 92,602/- under Section 78 which was imposed by the Adjudicating Authority. Being aggrieved by the impugned OIA, the Appellant is before the Tribunal.

2. The Learned Counsel appearing on behalf of the Appellant submits that Commissioner (Appeals) has erred in confirming the penalty even after noting the fact that this amount has been paid along with interest which was appropriated in the OIO. Therefore, she prays that the present Appeal may be allowed.

3. The Learned AR reiterates the findings of the Commissioner (Appeals)

4. Heard both sides and perused the documents.

5. After going through the factual matrix of the case, it is seen that the Appellant has paid Rs.92,602/- along with interest even before the issuance of Show Cause Notice. This amount has been appropriated by the Adjudicating Authority in the OIO passed by him. On appeal, the Commissioner (Appeals) has noted this point but still went ahead with confirming the penalty, which is not called for in this case.

6. Taking these details into account, the present Appeal is allowed with consequential relief, if any, as per law.

(Dictated and pronounced in the open court.)

Sd/-

(R. Muralidhar)
Member (Judicial)

Pooja