

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

REGIONAL BENCH – COURT NO.2

**Service Tax Appeal No.75508 of 2019**

(Arising out of Order-in-Appeal No.247/S.Tax I/Kol/2017 dated 27.09.2017 passed by Commissioner (Appeals) of CGST & Excise, Kolkata)

**M/s Radiant Security**

AD 361, Ground Floor, Sector I, Salt Lake, Kolkata-700064

**Appellant**

*VERSUS*

**Commissioner of CGST & Excise, Kolkata North**

180, Shantipally, Rajdanga Main Road, Kolkata-700107

**Respondent**

**APPEARANCE :**

Shri N.K.Chowdhury, Advocate for the appellant  
Shri P.K.Ghosh, Authorized Representative for the Respondent

**CORAM:**

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

**FINAL ORDER NO...75911/2023**

DATE OF HEARING : 26 .06.2023

DATE OF DECISION : 26.06.2023

**Per R.Muralidhar :**

The appellant is a provider of security services and audit was conducted for the period 2007-08, 2008-09 and 2009-2010. The Audit team reconciled figures shown in the ST-3 Returns and the figures shown in the Balance Sheet and raised the demand on the differential Service Tax. The appellant stated that the Balance Sheet figure shows the details of the turnover of their Kolkata Unit as well as turnover of their Bhubaneswar Unit. After this, the Department removed the turnover of Bhubaneswar Unit and have arrived at differential Service

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Tax of Rs.6,65,716 as clearly mentioned in Annexure A to the show-cause notice. After due process, the lower authorities confirmed the demand. Being aggrieved, the appellant is before the Tribunal.

2. The Id.Advocate for the appellant submits that the Department is claiming that the appellant should pay Rs.53,31,259/- during the period under dispute, whereas the appellant has paid Rs.55,23,130/- which has actually resulted in excess payment of Rs.1,98,871/-. The Id.Advocate further submits that several challans under which the Service Tax was paid, they were not accounted for by the appellant in the ST-3 Returns. They had submitted copies of the said challans to the Adjudicating authority. Without considering these challans, the authorities have confirmed the demands. He submits that if the challans are taken into consideration it would emerge that an excess payment of Service Tax of Rs.1,98,871/- has been made. Therefore, he prays that the appeal may be remanded to the adjudicating authority for conducting necessary verification.

3. The Id.A.R. for the Revenue, submits that the audit has conducted thorough examination of the Books of Accounts and compared the figures given in the balance sheet along with the figures shown in the ST-3 Returns. The short payment of Service Tax came to the knowledge only in respect of Kolkata Unit was arrived at. The Adjudicating Authority has clearly given his findings that the appellant could not substantiate their claim towards the excess payment of Service Tax by way of various challans and did not produce the relevant copies of challans. When no evidence is coming from the appellant, the Adjudicating Authority has confirmed the demand. The

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Id. Commissioner (Appeals) in his findings has also held that the appellant has not produced the documentary proof to the effect that these challans are properly reported as received by the Department. Therefore, even he has taken the view that the appellant has not produced the proper documentary evidence towards the appellant's claim for excess Service Tax payment. Accordingly, the Id.;A.R. for the Revenue, relying on the findings of the lower authorities, prays that the appeal may be dismissed.

4. Heard both sides and considered the submissions.

5. Admittedly, the Department has acceded to the request of the appellant and has arrived at the net Service Tax payable by the Kolkata Unit. The appellants were claiming that they have submitted several challans which were not reflected in the ST-3 Returns, but could not produce copies of such challans. On enquiry, even before the Tribunal, no such copies of the challans could be produced. It is not possible to take a view that they have themselves did not account for such several challans during the period of more than three years and did not reflect the same in the ST-3 Returns till the issue was pointed out by the Service Tax Audit Team. In the normal course, no assessee would miss out the Service Tax paid by way of GAR Challans to properly show the same in the ST-3 Returns. Such challans also would form part of their expenditure amount. Therefore, it is not clear as to how the appellant has himself not accounted for these challans during the period of three years. Further as the appellant has unit at Bhubaneswar, there may be possibility these challans have been used for Service Tax to be paid by that Unit. Unless, the entire transaction

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of Kolkata Unit vis-à-vis their Bhubaneswar Unit is undertaken, the fact of challans not accounted, cannot be examined. Since the issue pertains to 2007-2008 to 2009-10, at this stage, it would not possible for two Jurisdictional authorities to undertake this huge work to verify the appellant's claim. Therefore, as the appellant is not in a position to bring any proper clear evidence towards his explanation, I deem it to fit dismiss their appeal.

6. The appellant is required to pay the confirmed demand along with interest.

7. Noting that the appellant has also made same claims before the lower authorities that they have paid the excess Service Tax, the penalty imposed on the appellant under Section 78 of the Finance Act, 1944, is reduced to 25% subject to the appellant paying the confirmed demand along with interest and reduced to 25% penalty, within 30 days from the date of communication of this order. If they fail to do so, the penalty imposed would stand @ 100% of the confirmed demand.

6. The Appeal is disposed of in the above terms.

(Dictated and pronounced in the open court)

Sd/-  
**(R.Muralidhar)**  
**Member (Judicial)**

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