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

REGIONAL BENCH – COURT NO.2

Excise Appeal No. 169 of 2010

(Arising out of Order-in-Original No. 26/Pat/CEX/Appeal/10 dated: 15.03.2010 passed by the Commissioner of Central Excise & Service Tax, Patna.)

M/s Poonam Pharma Pvt. Ltd.
(Kanti Factory More, Kankarbagh, Patna.)

...Appellant

VERSUS

Commissioner of Central Excise & Service Tax, Patna
(2nd Floor, C.R. Building (Annexe), Bir Chand Patel Marg, Patna)

...Respondent

APPEARANCE :

None for the Appellant

Shri J. Chattopadhyay, Authorized Representative, for the Respondent

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

FINAL ORDER NO…75865/2023

Date of Hearing : 09.05.2023

Date of Pronouncement :27.06.2023

PER K. ANPAZHAKAN

The brief facts of the case are that the Appellant was engaged in providing the services as Clearing and Forwarding Agency and were also engaged in sale of bonds. Based on the Audit conducted on the Appellant's unit, a Show Cause Notice dated 11.06.20007 was issued to the Appellant demanding service tax of Rs.1,86,091/- along with interest and penalty, on the ground that the Appellant has not paid service tax on the commission income received on account of sale of bonds, under the category of Business Auxiliary Service. The Notice was adjudicated and the demand of service tax along with interest and penalty equivalent to service tax was confirmed by the adjudicating authority, vide Order-in-Original dated 19.02.2009. On appeal, the demands were upheld by the Commissioner(Appeals), vide Order-in-Appeal dated 15.03.2010. The present appeal is against this impugned order.

2. In their grounds of Appeal, the Appellant contended that the services rendered by them in relation to marketing of securities have been concluded prior to June 2003. Service tax under the category of 'Business Auxiliary Service' was introduced as a taxable service only w.e.f 01.07.2003, as defined under Section 65(105)(zzb)of the Finance Act, 1994. The Appellant contended that they have submitted all the bills relating to receipt of the commission for the said transactions before the adjudicating Authority, but the same was rejected on the grounds that the bills were not authentic. In his findings, the adjudicating authority stated that there was no running serial number on the face of the bills and observed that the bills may be fabricated. In the absence of any corroborative evidence such as assessed copy of Income tax return, payment particulars such as cheques, bank drafts etc., the claim of the Appellant that the services were rendered prior to 01.07.2003 could not be accepted.

3. The Ld A.R. Reiterated the findings in the impugned order.

4. Heard both sides and perused the appeal records.

5. We observe that the Appellant has not denied the rendering of services related to sale of bonds and earning commission income. The contention of the Appellant is that such services were rendered by them prior to introduction of service tax under the category of 'Business Auxiliary Service' w.e.f 01.07.2003. The bills submitted by them in support of this claim was not accepted by the lower authorities on the ground that there was no running serial number in the bills.

6. The Appellant stated that they have not suppressed any information from the department. The commission income received was duly reported in their Audited Balance Sheet, which is a public document. Since there was no suppression of fact, the demand raised by invoking the extended period of limitation is not sustainable.

7. We observe that the demand in the impugned order pertains to the period 2003-2004 and the Notice was issued on 11.06.2007, beyond the normal period of limitation. We observe that the details of commission income received by the Appellant have been collected by the Audit team form their Audited Balance Sheet, which is a public document. Thus, there is no suppression involved in this case, Hence, the demand raised by invoking

extended period of limitation not sustainable. As the Notice was issued on 11.06.2007 for the demand pertained to the period 2003-2004 , the entire demand of service tax in the impugned order is time barred. Hence, we hold that the impugned order is liable to be set aside on the ground of limitation..

8. In view of the above discussion, we allow the appeal filed by the Appellant.

(Pronounced in the open Court on…27.06.2023…)

Sd/-

(P. K. Choudhary)
Member (Judicial)

Sd/-

(K. Anpazhakan)
Member (Technical)

Pinaki