

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

REGIONAL BENCH – COURT NO.2

Service Tax Appeal No. 78028 of 2018

(Arising out of Order-in-Appeal No.271/S. Tax-II/KOL/2018 Dated 28.02.2018 passed by Commissioner of CGST & CX (Appeal-I), Kolkata)

M/s. Harvey's (Prop:- Sri Harvinder Singh Walia)
(229, Rajdanga Main Road, Nabapally, 2nd Floor, Kolkata-700107)

Appellant

VERSUS

**Commissioner of CGST & Central Excise, Kolkata South
Commissionerate**

(GST Bhawan, 180, Shantipally, Rajdanga Main Road, Kolkata-700107)

Respondent

APPEARANCE :

None for the Appellant

Mr. S. S. Chattopadhyay, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO.76048/2023

Date of Hearing : 11 July 2023

Date of Decision : 11 July 2023

PER R. MURALIDHAR

No one has appeared on behalf of the Appellant. In the interest of justice, the Appeal itself is taken up for disposal.

2. Heard the Learned AR and perused the documents.

3. The Appellant is engaged in providing Restaurant Service. The Department raised demand of Rs. 17,07,147/- for the period 2011-2012 to 2013-14. The Appellant in the course of investigation paid Rs. 6,78,471/- and paid Rs.14,31,340/- before the OIO was passed. The lower Authorities have confirmed the demand along with interest and imposed equal amount of penalty under Section 78. Being aggrieved, the Appellant is before the Tribunal.

4. The Appellant submits that they have never charged any Service Tax from their clients/customers while providing the services. As can be seen from the Show Cause Notice and OIO, this fact is not disputed by the Department. While the demand was arrived after giving the Appellant the benefit of abatement available for the Restaurant Service,

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Cum-Tax benefit was not granted to them. As per the Appellant, this has resulted in excess quantification of Service Tax demand of Rs.1,82,729/-. The Appellant also has calculated the interest on the Service Tax payable Rs. 4,02,664/- on the entire demand of Rs.17,07,147/- and has paid the same before issue of the Order-in-Original. From his Grounds of Appeal, it is seen that the Appellant is praying that the penalty imposed under Section 78 and under Section 77 may be set aside and they are not contesting the amount already paid by them.

5. The Learned AR reiterates the findings of the Lower Authorities.

6. From the documents available in the Appeal Papers, it is seen that the Department has quantified the Service Tax as 17,07,147/- without giving the benefit of Cum-Tax to the Appellant which works out to approximately Rs.1,82,729/-. The Appellant has also paid interest of Rs. 4,02,664/-. Since the Appellant has not charged any Tax from the clients, it is not a case where Appellant has collected the Service Tax and not paid to the Department.

7. Considering these factual evidence, I set aside the penalty of Rs.17,07,147/- imposed under Section 78 by the lower Authorities. However, the Appellant is required to pay penalty of Rs. 10,000/- under Section 77 towards non-furnishing of ST-3 Returns.

8. The Appeal is disposed of thus.

(Dictated and pronounced in the open court.)

Sd/-

(R. Muralidhar)
Member (Judicial)

Pooja