IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA

REGIONAL BENCH - COURT NO.1

Service Tax Appeal No.72 of 2012

(Arising out of Order-in-Appeal No.417-418/ST/Kol/2011 dated 02.12.2011 passed by Commissioner of Central Excise (Appeals), Appeal-I, Kolkata.)

M/s. Auto Centre
(225C, AJC Bose Road, Kolkata-700020.)

...Appellant

VERSUS

Commissioner of Service Tax, Kolkata

.....Respondent

(GST Bhawan, 180, Shantipally, Rajdanga Main Road, Kolkata.)

APPEARANCE

Ms. Shilpi Bajoria, Chartered Accountant for the Appellant (s)

Shri S.Mukhopadhyay, Authorized Representative for the Revenue

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

FINAL ORDER NO. 76233/2023

DATE OF HEARING : 27 July 2023
DATE OF DECISION : 27 July 2023

Per : ASHOK JINDAL :

The appellant is in appeal against the impugned order praying that the demand is confirmed by invoking extended period of limitation to be set aside and no penalty to be imposable on the appellant.

2. The facts of the case are that the appellant is an authorized service station and paying service tax thereon. The appellant was also engaged in providing taxable services under the category of 'business auxiliary service' w.e.f. 01.03.2003. Accordingly, a letter dated 08.05.2007 was issued to the appellant demanding service tax along with interest and to impose penalty for the period 01.07.2003 onwards.

After taking legal opinion, the appellant took registration under the category of 'business auxiliary service' and discharged its service tax liability for the 10.09.2004 onwards and intimated to the department vide letter dated 05.10.2007 that the appellant had not included purchase rebate and reimbursement of expenses for the purpose of calculating its service tax liability and that its liability if any would arise from 10.09.2004 onwards. Thereafter, again a letter dated 07.02.2008 was sent by the appellant explaining that in letter dated 05.10.2007, they have inadvertently mentioned the period 01.07.2003 to 31.03.2007, whereas it should have been 10.09.2004 to 31.03.2007. Thereafter on 21.10.2008, a show cause notice was issued to the appellant to demand service tax for the period 01.07.2003 to 31.03.2008 along with interest and to impose penalty. The matter was contested by the appellant and finally demand as per the proposal in the show cause notice was confirmed and amount already paid by the appellant had been appropriated and equivalent amount of penalty was also imposed. Against the said order, the appellant is before us.

3. The Ld.Counsel for the appellant submits that there was dispute going on that during the impugned period whether the appellant is liable to pay service tax or not and the said dispute has been later on settled by the Larger Bench of this Tribunal in the case of Pagaria Auto Center v. CCE, Aurangabad [2014 (33) STR 506 (Tri.-LB)], therefore, the extended period of limitation is not invocable in the facts and circumstances of this case.

4. Heard both sides.

5. We find that as appellant on their own motion on pointing out by the department has taken registration and paid service tax intimated the department on 05.10.2007, further, the issue whether the activity undertaken by the appellant under the category of 'business auxiliary service' are taxable or not? In that circumstances, we hold that extended period of limitation is not invocable, therefore, the demand pertaining extended period of limitation, is set aside and the demand within the period of limitation is confirmed along with interest and

whatever amount already paid by the appellant, the same is to be appropriated.

6. In the facts and circumstances of the case, no penalty is imposable on the appellant.

In view of this, the appeal is allowed with consequential relief, if any.

(Operative part of the order was pronounced in the open Court.)

Sd/

(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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