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

REGIONAL BENCH - COURT NO.1

Service Tax Appeal No.319 of 2010

(Arising out of Order-in-Appeal No.106/ST/2010 dated 28.04.2010 passed by Commissioner(Appeal-I) of Central Excise, Kolkata.)

M/s. Balmukund Polyplast Private Limited
(Dhulagarh Industrial Park, Howrah-711302.)

...Appellant

VERSUS

Commissioner of Central Excise & Service Tax, Haldia
.....Respondent
(15/1, Strand Road, Custom House, M.S. Building, Kolkata-700001.)

APPEARANCE

NONE for the Appellant (s)
Shri P.K.Ghosh, Authorized Representative for the Revenue

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

FINAL ORDER NO. 76769/2023

DATE OF HEARING : 14 September 2023
DATE OF DECISION : 14 September 2023

Per : ASHOK JINDAL :

The appellant is in appeal against the impugned order wherein demand of service tax has been confirmed against the appellant under the category of business auxiliary service.

2. The facts of the case are that on perusal of the records of the appellant for the years 2004-05 and 2005-06 during 01.09.06 to 07.09.06, the central excise officers noticed that bill no.004/2004-05 was issued on 31.03.2005 against taxable serviced provided by them and due service tax was paid against it while no service tax was paid on commission received for business auxiliary services provided by them against bill nos.005A/2004-05, 005B/2004-05, 005C/2004-05 and

005D/2004-05, shown to have been issued on 30.06.2004, 09.07.04, 09.07.04 and 09.07.04 respectively before taking out service tax registration. It, therefore appeared that the dates put on the subject bills were fictitious and deliberately done with an intention to evade service tax on the plea that those bills were raised before they got their service tax registration. Thus, the appellant appeared to have adopted fraudulent means and also appeared to have suppressed the fact by non-submission of datas in respect of those bills in their periodic returns filed in the range and thus appeared to have violated the provisions of section 68 of Finance Act, 1994 read with rule 6 of the Service Tax Rules, 1994 and section 70 of the Act with intent to evade payment of service tax. Therefore, the show cause notice was issued to the appellant. The appellant replied to the show cause notice and submitted that the service tax on commission agent service was exempt under Notification No.13/2003-ST dated 20.06.2003 up to 10.09.2004 and the said notification was withdrawn from 10.09.2004.

3. The case of the revenue is that the Bill No.5A to 5D were issued prior to withdrawal of the exemption and Bill No.4 is dated 31.03.2005 as shown to prove that dates of the above-said 4 bills were 30.06.2004 and 09.07.2004 should have been issued after 30.03.2005, but in order to avoid service tax.

4. It is his submission that these invoices were given wrong dates. It is his contention that this is mere a presumption and on the presumption no demand can be raised. It is his submission that they have rendered services w.e.f. 01.07.2004 to 09.07.2004. Since the services were rendered before 10.09.2004, therefore, no demand of service tax can be raised against the appellant. But the adjudicating authority confirmed the demand. Against the said order the appellant before us.

5. None appeared on behalf of the appellant. Nor any request for adjournment has been received. On perusal of records, we find that the appeal itself can be disposed of at this stage. Therefore, the appeal is taken up for disposal.

6. The sole issue raised by the revenue in this matter is that the appellant has issued 4 invoices Sl.No.5A to 5D before 10.09.2004 when the exemption under the business auxiliary service was withdrawn on commission agent and these bills have been raised deliberately by the appellant on the prior dates. But it is mere a presumption that these bills have been raised to avoid payment of service tax, but no evidence is brought on record by the revenue that the appellant has deliberately put the dates prior to 10.09.2004, when the exemption was withdrawn. Admittedly, these invoices are much more prior to the date when the exemption was withdrawn, therefore, it is under presumption by the revenue that these invoices were deliberately given back date. On the basis of presumption, no demand can be raised.

7. Accordingly, we hold that the demand against the appellant is on the basis of assumption and presumption is not sustainable.

8. In view of this, the impugned order is set aside and 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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