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

REGIONAL BENCH – COURT NO.2

Service Tax Appeal No.326 of 2012

(Arising out of Order-in-Appeal No. 217-218/ST/Kol/2011 dated 15.07.2011 passed by the Commissioner of Central Excise (Appeals), Appeal-I, Kolkata.)

M/s. S. S. Guards Pvt. Ltd.
(2/217A, Mahendra Banerjee Road, Rabindranagar, Kolkata-700060)

Appellant

VERSUS

Commr. of Service Tax, Kolkata
(Shantipally, 3rd Floor, 180, Rajdanga Main Road, Kolkata-700107)

R**espondent**

APPEARANCE :

Mr. H. K. Pandey, Advocate for the Appellant
Mr. P. K. Ghosh, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE MR. K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.77412/2023

Date of Hearing : 05 October 2023
Date of Decision: 05 October 2023

PER R. MURALIDHAR:

The Appellant is engaged in providing the Security Service Agency. They are registered with the Service Tax Department holding Service Tax registration No. AAECS7893QST001 with effect from 31/03/2000. On the ground that the Income Tax Return filed by them showed higher Income when compared to the ST-3 Returns, Show Cause Notice was issued demanding Service Tax of Rs.4,87,660/- for the period 2000-2001 to 2003-04. After due process, the demand was confirmed along with interest and penalties. Being aggrieved, the Appellant is before the Tribunal.

2. The learned Advocate appearing on behalf of the Appellant submits that the entire demand has been made and confirmed based on the Income Tax figures shown by the Appellant. The Appellant at

the time of their reply during the Personal Hearing have clarified that several reimbursable expenses also are part of the total Income being shown by them for the Income Tax Returns. It is the general practice to show the gross Income in the RT Returns for the purpose of availing better credit facilities from the banks. They have provided proper documentary evidence to the lower Authorities to the effect that they have received reimbursements on various counts from their clients for the expenses incurred by them. The factual details and documentary evidence produced were not properly considered by the lower Authorities. Therefore, he submits that on merits, the confirmed demand is required to be set aside.

3. He further submits that the Show Cause Notice has been issued on 24/05/2005 for the period 2002-04 by invoking the extended period provisions. It is on record that the Appellant has been paying the Service Tax regularly and also has been filing the ST-3 Returns. In this Returns, they have shown the net income received by them and details of the Service Tax paid by them. He submits that when all the facts have been properly reflected in the ST-3 Returns, the question of suppression does not arise. Therefore, he submits that the impugned order is required to be set aside on account of limitation also.

4. He also relies on the case law of Shriram Chits Pvt. Ltd. Vs. Commr. of C. Ex., Cus. & S. T., Hyderabad-2023 (69) G.S.T.L. 397 (Tri.-Hyd.) wherein, it has held that when all the details are shown in the ST-3 Returns and Income Tax Returns are also properly filed, the demand for the extended period cannot be legally sustain.

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

6. We have gone through the Appeal papers, documentary evidence and case law cited.

7. We find that it is an admitted fact that the Appellant has obtained Service Tax Registration from the Department on 31/03/2000 and has been paying the Service Tax regularly on the net

Income being received by them from the services provided. They have also been filing their ST-3 Returns regularly. While the Appellant has made pleadings on account of reimbursable expenses having been received from their clients, it is seen that the lower authorities have not addressed this issue. In order to come to a conclusion, the lower authorities should have got the same verified. Only if the verification reported adversely, they could have confirmed the demand which has not been done in this case. Further, it is a common knowledge that sometimes the small parties show higher turnover so as to get the better credit facilities from the banks. The lower Authorities have not got these facts verified while passing the orders. Therefore, on merits, we take the view that the confirmed demand legally does not sustain. Accordingly, we set aside the order on merits.

8. Further, it is seen that the Appellant has filed their ST 3 Returns on time. Demand is based on the ST-3 Returns figures and the Income Tax Returns figures. This shows that the Appellant has declared their turnover both before the Service Tax Department as well as before the Income Tax authorities. In the cited case law of Shriram Chits Pvt. Ltd. Vs. Commr. of C. Ex., Cus. & S. T, Hyderabad, the Tribunal has held as under:-

> ***17.5*** *In view of our discussions as also the decision of the Co-ordinate Bench of the Tribunal in the case of M/s. Amway India Enterprises Pvt. Ltd. (supra), we are of the considered view that the proceedings are barred by limitation of time and hence, the appeal should succeed on the ground of limitation as well.*

9. In the present case, the ratio of the cited case law is squarely applicable. Accordingly, we hold that the confirmed demand is not sustainable in respect of the demand pertaining to extended period.

10. The Appeal is allowed both on merits as well on account of limitation. The Appellant would be entitled for consequential benefit, if any, as per law.

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

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

Sd/-
(K. Anpazhakan)
Member (Technical)

Pooja