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

REGIONAL BENCH – COURT NO.2

Service Tax Appeal No. 70861 of 2013

(Arising out of Order-in-Original No.17-17A/COMMR/ST/GHY/12-13 dated 6th March 2013 passed by Commissioner, Central Excise & Service Tax, Guwahati.)

M/s. Sun security Services
(H. No. 211 (1st Floor), Near AIDC (Main Road), R. G. Baruah Road Guwahati-781024 (Assam))

Appellant

VERSUS

Commr. of Central Excise & Service Tax, Guwahati
(5th Floor, Sethi Trust Building, Bhangagarh, G. S. Road, Guwahati, 781005 (Assam))

R**espondent**

APPEARANCE :
Mr. Devaraj Sahu, Advocate for the Appellant
Mr. K. Chowdhury, Authorized Representative for the Respondent

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

FINAL ORDER NO.77742/2023

Date of Hearing : 21 December 2023
Date of Decision: 21 December 2023

PER R. MURALIDHAR:

The Appellant is the provider of Security Services to various Public Sector Undertakings and other companies. Show Cause Notice was issued on the ground that they have not made the payment of full Service Tax during the period 2005-06 to 2009-10. The Adjudicating Authority after going through the documentary evidence placed by the Appellant and after considering the statutory provisions, dropped the demand of Rs.48,42,633/- and confirmed the balance demand of Rs. 92,29,583/-.

2. Being aggrieved by the dropping of the demand of Rs. 48,42,633/, the Revenue has come up on Appeal before the Tribunal which is being heard and finalized by way of a separate Final Order.

3. The Appellant being aggrieved by the confirmed demand is before the Tribunal.

4. The Learned Advocate submits that during the period under dispute, the assesses were required to pay the Service Tax based on the actual receipt of amount from their clients. The Appellant was registered with the Department since the year 2000 and they have been discharging the Service Tax on the actual receipt basis. When the investigation was taken up and the Statement was recorded on 12/08/2008, the Proprietor, Mr. Surajit Berman while answering the question No. 28 has clearly stated that they are not making the payment based on P & L Account but they are making the payment based on the actual receipts and the same is reflected in their ST-3 Returns. The Advocate submits that the Department has quantified the present demand based on the Profit & Loss Account figure wherein the total Billing done is shown on the credit side, taking the same as the Total receipt for the year. From this, the amount shown as Sundry Debtors has been deducted and this amount has been taken as the net receipt for the year and accordingly, the demand has been quantified on this amount. He submits that Sundry Debtors would show the amounts due for many years and it cannot be taken as pertaining to one year only. Apart from this, the total sales figures shown in the Credit side would also include many instances wherein clients were paying only the basic amount of security services without making any payment towards the Service Tax amount. Towards this, he submits a copy of the letter issued by BSNL dated 05/05/2010 wherein they have stated that for the period 2005-06 to 2008-09 though the Appellant has charged the Service Tax on them, no Service Tax was paid by BSNL. The North Eastern Railway, Guwahati

also has given a similar letter stating that no Service Tax amount was paid to the Appellant.

5. Therefore, he submits the quantified demand is erroneous and is not based on actual receipt. He further submits statement of over Rs.2 Crores paid as Service Tax by the Appellant during the period 2005-2006 to 2009-10 along with interest of Rs. 20.48 Lakhs whenever there was any delay in Service Tax payment. These payments were also reflected in the normal ST-3 Returns filed by them. In view of the foregoing, he submits that the quantification itself has not been done properly by the Department in the present proceedings.

6. Further he submits that they have taken Registration in 2000 and were filing all their ST-3 Returns and they were also filing their Income Tax Return as per the P & L Account and Balance Sheet which has been relied upon by the Department to issue the Show Cause Notice. Therefore, any question of suppression does not arise. Hence, he submits that the confirmed demand for the extended period is required to be set aside.

7. The Learned AR submits that the Department has correctly worked out the net receipt based on the P & L Account, sales figure and the debtors shown therein. They have given the benefit of the debtors pertaining to very old period and very systematically the quantification has been done. Since the demand has been arrived at based on the correct receipts, the demand quantification cannot be said to be erroneous. Further he submits that based on the quantification provided by the Appellant and documentary evidence provided by them, the Adjudicating Authority has already dropped the demand of Rs. 48,42,633/-. Therefore, it cannot be said that any injustice was done to the party. He further submits that the matter of short payment of Service Tax has come to the knowledge of the Department, only after

detailed investigation. The Department had to undertake detailed working for finalizing the demand. The Appellant's claim that suppression is not proved, is not correct.

8. We have heard both sides and perused the documents on record.

9. We take up the time bar angle first. We find force in the Appellant's argument that they have taken Registration in the year 2000 and have been paying the Service Tax regularly. There is no allegation in the Show Cause Notice that on the count that they were not paying the Service Tax or they were not filing the ST 3 Returns regularly. The details of Service Tax paid by them during the period 2005-10 shows that they have paid Service Tax of Rs. 2,00,33,397/- along with interest of Rs.13,48,219/- whenever, they have delayed the payment of Service Tax. The letter issued by BSNL also shows that a reputed Public Sector undertaking like BSNL has not paid the Service tax charged by the Appellant. Further, the Appellants have filed their Income Tax Return. Based on the Profit and Loss Account filed before the Income Tax Authority, the present quantification has been arrived at by the Revenue. All these point out that there is no case of any suppression on the part of the Appellant. Therefore, we hold that the confirmed demand for the extended period is liable to be set aside and we do so.

10. Now coming to the quantification of demand, both sides agree that the Service Tax is required to be arrived at only on the basis of actual receipts. For this limited purpose, we are remanding the matter to the Adjudicating Authority. He is directed to take up this exercise in respect of the demand for the normal period only.

11. The Appellant is required to provide all the documentary evidence before the Adjudicating Authority towards their claim that they have considered all the receipts to discharge the Service Tax payment. If after

verification, any amount is found to have been short paid, the Appellant would be required to pay the same along with interest. However, the penalty on this issue is set aside. The appellants are required to pay the penalty of Rs. 2,000/- towards the delayed filing of Return.

12. The Adjudicating Authority is directed to complete the de-novo proceedings within 4 months from the date of receipt of this Order.

13. The Appeal is disposed of thus.

(Dictated and pronounced in the open court.)

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

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

Pooja