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

REGIONAL BENCH – COURT NO.1

Service Tax Appeal No.78710 of 2018

(Arising out of Order-in-Appeal No.293/RAN/2018 dated 04.07.2018 passed by Principal Commissioner of CGST & Excise, Ranchi)

M/s Aditya Dhanraj Enterprises Private Limited
Srilok Complex, Old H.B.Road, Ranchi-834001

Appellant

VERSUS

Commissioner of CGST & Excise, Ranchi
C.R.Building, 5A, Main Road, Ranchi-834001

Respondent

APPERANCE :
Shri Rajeev Agarwal & Shri Siddharth Agarwal, both Advocates for the Appellant
Shri S.S.Chattopadhyay, Authorized Representative for the Respondent

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

FINAL ORDER NO.75382/2024

DATE OF HEARING : 28 .02.2024
DATE OF DECISION : 28 .02.2024

Per Ashok Jindal :

The appellant is in appeal against the impugned order wherein the demand of service tax has been confirmed by invoking extended period of limitation.

2. The facts of the case are that the appellant is engaged in providing the services under the category of "Business Auxiliary Service" and the "Goods Transport Agency" Service

2.1 On scrutiny of the documents during Audit, it was observed that the appellant has made delay payment of due service tax as they have not paid the due service tax during the period 2012-13 and 2013-14.

2.2 Therefore, proceedings were initiated the appellant as they have not paid the service tax along with interest.

2.3 A show-cause notice came to be issued to the appellant to demand service tax along with interest.

2.4 The matter was adjudicated. The demand of service tax was confirmed.

2.5 Against the said order, the appellant is before us.

3. The ld.Counsel for the appellant, submitted that the appellant has provided "output services" towards loading supervision and transportation and has paid service tax under the category of Business Auxiliary Services. It is submitted that the transportation charges disclosed in the financial statement is essentially the payment towards hiring of vehicle for use in providing output services, which is not liable to pay service tax as shown as transportation charges. He submits that in the impugned order, it is recorded by the ld.Commissioner (Appeals) that the appellant has duly paid the service tax on output services and has not discharged the payment of service tax under RCM on transportation charges incurred by them. It is also held that although it is a revenue neutral situation, but as the appellant has not paid the service tax, therefore, he rejected the case of the Revenue neutrality. He further submits that it is a settled law where the demand is under reverse charge mechanism, the asseessee would be entitled to take the cenvat credit. Therefore, resulting in a complete revenue neutral situation, the extended period of limitation is not invokable. To support his contention, he relies on the decision of this Triunal in the case of Asmitha Microfin Limited Vs. Commissioner of Customs, Central Excise & Service Tax, Hyderabad III reported in 2020 (33) GSTL 250 (Tri.-Hyderabad) wherein it was held that the demand on the extended

period of limitation is not sustainable. He therefore prays that the impugned order is to be set aside.

4. On the other hand, the ld.A.R. for the Revenue, supported the impugned order.

5. Heard both sides and considered the submissions.

6. We find that the appellant was required to pay service tax on transportation services under Reverse Charge Mechanism (RCM). If the said charges would have been paid by the appellant, the same were entitled to take the cenvat credit to the appellant. Therefore, it is a situation of revenue neutrality as the appellant himself has to take the credit of the same.

7. In that circumstances, a show-cause notice issued to the appellant on 06.04.2016 for the period October, 2012 to March, 2013, is barred by limitation as held by this Tribunal in the case of Asmitha Microfin Limited (supra), wherein this Tribunal has held as under :

> *"**6.** However, we find that the demand is for the period April, 2009 to March, 2012 and the show cause notice was issued invoking extended period of limitation on 17-10-2014. The entire demand is under reverse charge mechanism and if the appellant had paid the service tax under reverse charge mechanism, they would have been entitled to Cenvat credit of exactly the same amounts. Therefore, the revenue neutrality in this case is evident. It has been well settled at the hands of the Apex Court in the case of Jet Airways (supra) that extended period of limitation cannot be invoked in revenue neutral cases. Therefore, the entire demand is hit by limitation and therefore needs to be set aside. The impugned order is set aside and the appeal is allowed.*

8. Therefore, following the precedent decision of the decision of this Tribunal, we hold that the extended period of limitation is not sustainable in this case.

9. In view of this, we set aside the impugned order and allow the appeal with consequential relief, if any.

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

(Ashok Jindal)
Member (Judicial)

(K.Anpazhakan)
Member (Technical)

mm