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

REGIONAL BENCH – COURT NO.2

Service Tax Appeal No. 75558 of 2019

(Arising out of Order-in-Appeal No.27/SH/CE(A)GHY/18 dated 11/12/2018 passed by Commissioner (Appeals), CGST, Central Excise & Customs, Guwahati.)

Mr. Dipak Paul
(Son of Sri Nityananda Paul, 140 Motor Stand, Agartala, 799006, Tripura West)

Appellant

VERSUS

Commr. of CGST, Central Excise & Service Tax, Guwahati
(Customs House, Nilamoni, Phukan Path, Christian Basti, Guwahati-781005, Assam)

Respondent

APPEARANCE :
Mr. Pranab Sikder, Consultant for the Appellant
Mr. P. K. Ghosh, Authorized Representative for the Respondent

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

FINAL ORDER NO.75406/2024

Date of Hearing : 4th March 2024
Date of Decision: 4th March 2024

PER R. MURALIDHAR:

The Appellant has taken up the Works Contract for providing construction service for Tripura Housing and Construction Board, Agartala. They were under impression that since this is the Government body, no Service Tax is required to be paid by them. Therefore, they neither charged the Service Tax on their client nor paid the Service Tax with the Department. Subsequently, they were informed by the Jurisdictional Assistant Commissioner (AC) that they are required to pay the Service Tax of Rs. 19,13,494/- for the work undertaken for Tripura Housing and Construction Board. The Appellants vide their Challan dated 22/01/2016 paid Rs. 18,18,283/- and on 08/02/2016, they have paid further Rs. 28,903/-. Thus, they have paid totally Rs. 18,47,186/-. The Appellant is a proprietary firm. Subsequently, they came to know that as a proprietary firm, they were required to discharge only 50% of the Service Tax when they provide Works Contract Service. For the excess Service Tax paid by them, they filed a refund claim for Rs. 7,96,757/-. Initially, this refund claim was rejected by the Adjudicating Authority. On appeal, the Commissioner (Appeals) allowed their Appeal and held that they are eligible for this refund. Subsequently, this refund was granted by the Adjudicating Authority.

2. In the meanwhile, a Show Cause Notice was issued on 14/06/2016 seeking to appropriate Rs. 18,47,186/- paid by them and also seeking to know as to why the interest should not be charged on this amount and as to why the penalty should not be imposed under Section 78.

3. The Appellants submitted that while they had paid Rs. 18,47,186/-, as a matter of fact, they had paid excess Service Tax of Rs. 7,96,757/- which was subsequently refunded to them. As per their own calculation, the interest liability is to be at Rs. 94,462/- which was paid before issue of Show Cause Notice. They also submitted that since the entire Service Tax including excess Service Tax of Rs. 7,96,757/- was paid before the issue of Show Cause Notice, no penalty should be imposed on them. After due process, the Adjudicating Authority appropriated Rs. 10,49,587/- and directed them to pay interest of Rs. 702,469/-. He also imposed penalty of Rs. 10,49,587/- under Section 78 of the Finance Act, 1994. On appeal, the same was dismissed by Commissioner (Appeals). Being aggrieved, the Appellant is before the Tribunal.

4. The Learned Consultant takes me through the factual details and submits that there was no malafides on the part of the Appellant for not having paid Service Tax initially. As soon as their mistake was pointed out, they have made the full payment of Rs. 18,47,186/-. While making this payment, they have made a mistake and paid the Service Tax @ 100% whereas they were eligible to pay concessional rate of 50% in terms of Notification No. 30/2012-ST dated 20/6/2012. This has actually resulted in excess payment of Rs.7,96,757/- which was refunded to them after

prolonged litigation. He also submits that before issue of Show Cause Notice itself, they have calculated the interest payable as Rs. 94,462/- and paid the same on 09/06/2017. Therefore, he submits that the lower authorities are in error in confirming the interest of Rs. 7,02,469/- and imposing penalties of Rs. 10,49,587/-. He makes further submission that while filing the present Appeal, they have re-calculated the correct interest and takes me through to the Table at Page 11 of their Appeal wherein, the total interest liability has been arrived at Rs. 2,24,600/-. He prays that they are not disputing this amount but submits that Rs. 94,462/- paid by them should be adjusted against this amount of interest payable. He prays that penalty under Section 78 may be set aside.

5. The Learned AR reiterates the findings of the Adjudicating Authority and Commissioner (Appeals) and relies on their findings towards the confirmed demand, interest and penalty.

6. Heard both sides and perused the Appeal Papers and documentary evidence placed before me.

7. Admittedly, after the non-payment of Service Tax issue was raised by the Assistant Commissioner, the appellant immediately paid Rs. 18,47,186/- without even taking the benefit of Notification No. 30/2012-ST dated 20/06/2012 because of which the Appellant has ended up paying the excess Service Tax of Rs. 7,96,757/-. They have also paid Rs. 94,462/- as interest on 09/06/2017. Only after this, the present Show Cause Notice was issued on 14/06/2016. Even as the present Show Cause Notice was issued, the Appellant realized their mistake of having paid higher Service Tax, they had filed the refund claim which was initially rejected by the Adjudicating Authority but on appeal, the same was allowed by the commissioner (Appeals). After this, another OIO was passed sanctioning the refund of Rs. 7,96,757/-. All these documents are on record with the Assistant Commissioner who has passed the impugned OIO on 25/05/2018. Thus the Department was having full knowledge that out of the demanded amount of

Rs. 18,47,186/-, the Jurisdictional AC himself has sanctioned refund of Rs. 7,96,757/-. The Adjudicating Authority has erroneously applied the interest rate of 18%, 24% and 30% the Appellant was a small party with annual turnover of less than Rs. 60 lakhs. From the Table given at Page 8 of the OIA (Page 25 of the Appeal Book), it is seen that the turnover of the Appellant was less than Rs.60 Lakhs. Therefore, the Appellant is required to pay 18% interest less 3% concession given to them (Net interest @ 15%). I find the Appellant has correctly calculated and shown the interest payble in the Table at Page No. 11 & 12 of the Appeal Book. As per this Table, I find that the interest payable is only Rs. 2,24,600/-.Admittedly, the Appellant has paid Rs. 94,462/- on 09/06/2017. Therefore, the Appellant is directed to pay the balance interest amount of Rs. 130,138/- on or before 15th April 2024.

8. Now coming to the penalty imposed under Section 78, I find that the Appellant has carried a bonafide belief that they were providing Service Tax to the Government of Tripura. They did not collect any Service Tax from them. Immediately on being pointed out, they have paid the entire Service Tax which resulted in excess Service Tax of Rs. 7,96,757/-. Even to get this refund of this excess payment, they had to run from pillar to post. Considering these facts, I do not find that any case has been made out against the Appellant towards suppression. Therefore, I set aside the penalty of Rs. 10,49,587/- imposed under Section 78.

9. To summarize;-

(a) The Appellant is required to pay the balance interest of Rs. 130,138/- on or before 15/4/2024.

(b) The penalty imposed under Section 78 is set aside.

10. The Appeal is disposed off thus.

Dictated and pronounced in the open court.)

Sd/-

(R. Muralidhar)
Member (Judicial)

Pooja