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

REGIONAL BENCH - COURT NO.1

Service Tax Appeal No.75446 of 2015

(Arising out of Order-in-Appeal No.958/Pat/S.Tax/Appeal/2015 dated 12.12.2015 passed by Commissioner (Appeals), Customs, Central Excise & Service Tax, Patna.)

M/s. Hotel Chanakya Private Limited
(Hotel Samrat International, Fraser Road, Distt. Patna, Bihar.)

...Appellant

VERSUS

Commissioner of Central Excise & Service Tax, Patna
.....Respondent
(Central Revenue Building (Annexe), Birchand Patel Path, Patna-800001.)

APPEARANCE

Shri H.K.Pandey, Advocate for the Appellant (s)

Shri S.S.Chattopadhyay, Authorized Representative for the Revenue

CORAM: HON'BLE SHRI ASHOK JINDAL, MEMBER(JUDICIAL)
HON'BLE SHRI RAJEEV TANDON, MEMBER(TECHNICAL)

FINAL ORDER NO. 75706/2024

DATE OF HEARING : 04.04.2024
DATE OF DECISION : 04.04.2024

Per : ASHOK JINDAL :

The appellant is in appeal against the impugned order confirming the demand of service tax and imposing penalty thereon.

2. The facts of the case are that the appellant is a service provider and registered under the category of 'Accommodation Service', 'Restaurant Service', 'Mandap Keeper Service' and filing their ST-3

returns. It was alleged that the appellant evaded the payment of service tax during the period 2011-12 i.e. April to September of Rs.5,23,206/-. The fact was observed during the course of scrutiny of ST-3 returns. As the appellant showed the taxable value of services, but did not pay service tax on the said receipts. As the ST-3 return was filed on 28.03.2011, thereafter a letter was issued on 12.03.2013 pointing out the discrepancies in ST-3 return of short payment of service tax. Thereafter, another letter on 08.06.2013 was issued for short payment of service tax. The appellant stated that they could not declare the correct facts in their ST-3 returns and wished to opt for VCES 2013. The VCES was opted by the appellant on 31.12.2013 and paid the service tax accordingly. Thereafter, a show cause notice was issued as the VCES 2013 was not allowed to the appellant to demand service tax and to impose penalty. The matter was adjudicated, demand of service tax along with penalties were confirmed. Aggrieved from the said order, the appellant is before us.

3. Heard the parties.

4. We find that in this case the appellant is registered with the Service Tax Department and filing their ST-3 returns regularly. Accordingly, for the impugned period i.e. April, 2011 to September, 2011, the return was filed on 28.12.2011 showing the taxable service provided by the appellant, but no service tax was paid. This fact was indicated by the appellant in their ST-3 return and the scrutiny of ST-3 returns took place on 12.03.2013, which means the appellant has no *mala fide* intent to evade payment of service tax, but the appellant has short paid the service tax.

5. In that circumstances, the short paid service tax is to be recovered from the appellant, but no penalty can be imposed on the appellant.

6. In view of this observation, the demand of service tax is confirmed and penalty imposed on the appellant is dropped. If the appellant has paid the service tax earlier, the same has to be adjusted against the demand of service tax confirmed by this order.

Appeal is disposed of in the above terms.

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

Sd/
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/

(RAJEEV TANDON)
MEMBER (TECHNICAL)

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