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

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 75139 of 2015

(Arising out of Order-in-Original No.26/Commr/CE/Haldia/Adjn/2014 dated 29.09.2014 passed by Commissioner of Central Excise, Kolkata)

Commissioner of Central Excise, Kolkata **: Appellant**
25, Princep Street, (3rd Floor), Kolkata-700072.

VERSUS

M/s. Ripley & Co. Ltd. **: Respondent**
CPT Complex, Block-I, Chiranjeebpur, Haldia, Purba Medinipur, Pin: 721604.

APPEARANCE:

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

Shri Debtosh Dey, Advocate for the Respondent

CORAM:

HON'BLE SHRIASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 76540/ 2024

DATE OF HEARING :08.07.2024

DATE OF DECISION:08.07.2024

Order : [Per Shri Ashok Jindal]

The Revenue is in appeal against the impugned order.

2. The facts of the case are that the Respondent is a Service Tax Registration holder for providing taxable service like Port Service, Cargo Handling Service, Goods Transport by Road and Customs House Agents Service(CHA). It was alleged in the Show Cause Notice that the Respondent contravened the provision of Section 67, Section 68, Section 69, Section 70 of Finance Act, 1994 along with Rule 6 (4A), Rule 6 (4B)(iii), Rule 6 (1A), Rule 7 of Service Tax Rules and Rule 7 of Cenvat Credit Rules, 2004

during the period of 2007-08 to 2010-11 by way of adjustment more than Rs. 1,00,000/- at a time from the advance paid amount and such advance payment was never brought to the notice of the concerned Range Officer. Therefore, amount of such adjustment of Rs 3,83,71,415/- was above the permissible limit therefore, same cannot be adjusted. And there were some other issues also which are not the subject matter of this appeal. The Adjudicating Authority relying on the decision of the Siemens Ltd. Versus Commissioner of Central Excise, Pondicherry, 2013 (29) S.T.R. 168 (Tri-Chennai), dropped the demand against the Respondent.

2. Aggrieved from the said order, Revenue is before us.

3. The Ld. Authorized Representative, for the Revenue submitted that as per Rule 6(4A) of Service Tax Rules the adjustment more than 1,00,000/- is not allowed against the advance payment. Therefore, impugned order dropping the demand against the Respondent is to be set aside. He also relied from the decision of JCT Electronics Ltd. versus Commissioner of Central Excise & Service Tax, Vadodara, 2014 (34) S.T.R. 778 (Tri-Ahmd.) to say that Suo Motu adjustment of differential Service Tax amount-Adjustment after a long lapse of period and not in succeeding month or quarter –No reasonable explanation from the appellant for doing so. Therefore, procedure prescribed by the legislation for availing an exemption/concession to be followed strictly in that fashion only as per Rule 6(4A) and 6(4B) of Service Tax Rules, 1994.

4. Heard the Ld. Authorized Representative and perused the record.

5. We find that in the impugned order the Ld. Adjudicating Authority relied on the decision of Siemens Ltd. (Supra) wherein this Tribunal held that Rule 6(4B) is applicable to the facts and as per the explanation given by the Respondent that they were receiving payment from the client in lumpsum without bill-wise details. Such bill details are ascertained by the Respondent to prolong reconciliation. In many cases TDS certificate of the client which are issued after month of June every year are based for such reconciliations. Therefore, payment details are not known by 5th of the month following the receipts. Consequently, the Respondent was making payments of service tax on gross receipts. After year-end reconciliations, excess tax payment was revealed due to tax payments against non-taxable bills and there was no unpaid tax liability during the year therefore, they were carrying forward unutilized Cenvat Credit balance which was adjusted against the payments of service tax.

6. We find that the decision relied upon by the Ld. Authorized Representative in the case of JCT Electronics Ltd. (Supra) is not similar to the facts of this case as in that case the appellant did not give any explanation for adjustment after prolonged period. Therefore, the said decision is not applicable to the facts of this case and the decision in the case of Siemens Ltd. (Supra) is fairly applicable to the facts of this case as Respondent has explained the reasons for non- adjustment of advance in succeeding month or quarter.

7. Therefore, we do not find any merit in the appeal filed by the Revenue. Accordingly the same is dismissed.

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

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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