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

REGIONAL BENCH – COURT NO.1

Service Tax Appeal No.75429 of 2016

(Arising out of Order-in-Appeal No.82/JSR/2015-16 dated 18.01.2016 passed by Commissioner (Appeals) of Central Excise & Service Tax, Ranchi)

M/s A.K.Dutta & Company Private Limited
(528-G Road, Sonari West Layout, Jamshedpur-831001)

Appellant

VERSUS

Commissioner of Central Excise & Service Tax, Ranchi
(Room No.605, 6th Floor, Mahabir Tower,Behind Glitz Cinemas Main Road, Ranchi-834001)

Respondent

APPERANCE :

Shri A.K.Shrivastava & Shri Akash Sharma, both Advocates for the Appellant
Shri A.K.Chaudhary, Authorized Representative for the Respondent

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

FINAL ORDER NO.76712/2024

DATE OF HEARING : 20 .08.2024
DATE OF DECISION : 20.08.2024

Per Ashok Jindal :

The appellant is in appeal against the impugned order for imposition of penalty under Section 78 of the Finance Act, 1994.

2. The facts of the case are that the show-cause notice was issued to the appellant alleging that the appellant was providing commercial or industrial construction services and has failed to pay service tax in time. Therefore, the proceedings were initiated against the appellant . The appellant submitted that the appellant had option to opt payment of tax either under Notification No.1/2006 dated 01.03.2006 where the amount of goods were required to be added in the service content and a tax was to have been paid on 33% of the gross value and on 100%

value of the service content in the Notification No.12/2003-ST dated 20.06.2003. As the appellant has paid the VAT on the materials supplied by them, therefore, only on the above services, they were required to pay service tax, but the adjudicating authority found that as the appellant has paid the VAT on the materials supplied and for remaining amount, they have paid service tax. Therefore, the adjudicating authority appropriated the amount already paid by the appellant and refrained from imposing penalty under Sections 77 & 78 of the Finance Act, 1994.

2.1 The said order was challenged by the Revenue before the ld.Commissioner (Appeals) on the ground that the appellant is required to be penalized under Section 78 of the Act. The ld.Commissioner (Appeals) held that the appellant has suppressed the vital information relating to taxable value of free materials supplied to them. Therefore, they are liable to pay penalty under Section 78 of the Act. Accordingly, the penalty under Section 78 of the Act was imposed on the appellant.

2.2 Aggrieved from the said imposition of penalty, the appellant is before us.

3. Heard both the parties and considered the submissions.

4. On going through the facts, we find that it is a fact on record that the appellant is engaged in the activity of erection, commissioning and installation services along with materials and on supply of material part, the appellant has paid VAT and for remaining part, they are paying service tax in terms of Notification No. 12/2003-ST dated 20.06.2003. Further, no contrary evidences have been produced by the authorities below and the ld.Adjudicating Authority considering the same, has

refrained from imposition of penalty on the appellant, but the ld.Commissioner (Appeals) has imposed penalty against the appellant without appreciating the facts of this case.

5. In that circumstances, the penalty imposed on the appellant is not warranted. Accordingly, the same is dropped.

6. In view of this, we set aside the impugned order qua imposing penalty on the appellant.

7. In terms of the above, the appeal is allowed with consequential relief, if any.

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

(Ashok Jindal)
Member (Judicial)

(K.Anpazhakan)
Member (Technical)

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