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

REGIONAL BENCH – COURT NO.1

Service Tax Appeal No.75364 of 2014

(Arising out of Order-in-Appeal No.330/Pat/S.Tax/Appeal/2013 dated 06.09.2013 passed by Commissioner (Appeals) of Customs,Central Excise & Service Tax, Patna)

M/s Maa Ambey Enterprises
(Swami Sahajanand Colony,Bhagwanpur Chowk, Dist.-Muzaffarpur)

Appellant

VERSUS

Commissioner of Central Excise & Servic Tax, Patna
(C.R.Building, Birchand Patel Path, Patna-800001)

Respondent

APPERANCE :

Shri Ashok Kumar Bhattacharya & Ms.Aparupa Bhattacharya, both Advocates for the Appellant
Shri K.Chowdhury, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO.76922/2024

DATE OF HEARING : 03 .09.2024
DATE OF DECISION : 03.09.2024

Per Ashok Jindal :

The appellant is in appeal against the impugned order imposing penalty under Section 78 of the Finance Act, 1944.

2. The facts of the case are that on the basis of audit, it was noticed that the appellant was engaged in providing taxable services i.e. site formation services to M/s Power Grid Corporation of India, Patna and approached road at Runnisaidpur as per their agreement dated 20.07.2009 and 12.03.2010 with M/s Power Grid Corporation of India,

Patna and started their work and received payment on various dates, on which, it was alleged that no service tax has been paid.

2.1 After examining the issue, the adjudicating authority held that the appellant is liable to pay service tax to the tune of Rs.3,81,451/- along with interest, which was paid by the appellant.

2.2 The ld.Adjudicating Authority confirmed the demand of service tax along with interest, but refrained from imposing penalty under Section 78 of the Act.

2.3 Against the said order, the Revenue preferred an appeal before the ld.Commissioner (Appeals), who imposed penalty on the appellant under Section 78 of the Act.

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

3. The ld.Counsel for the appellant submits that the appellant, being a new, was not known about the levy of service tax in their activities. As soon as, they were pointed out, they paid the service tax along with interest immediately after receiving the show-cause notice. It is evident from the invoices raised by the appellant wherein the appellant did not collect the service tax from the service recipient. In that circumstances, the penalty under Section 78 of the Act, is not imposable on the appellant.

4. The ld.A.R. for the Revenue, reiterated the findings of the impugned order.

5. Heard both the parties and considered the submissions.

6. We find that in this case, admittedly, the appellant while raising invoices, has not collected service tax from the service recipient, which

shows that the appellants under bonafide belief are not paying service tax but immediately on pointed out by the Department by issuance of show-cause notice, the appellants paid the service tax along with interest. In that circumstances, we hold that the penalty under Section 78 of the Act, is not imposable on the appellant. Accordingly, the penalty imposed on the appellant is set aside.

7. In the result, 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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