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

<u>REGIONAL BENCH - COURT NO.2</u>

Service Tax Appeal No.397 of 2011

(Arising out of Order-in-Original No.18/S.Tax/Commissioner/2011 dated 20.06.2011 passed by Commissioner, Central Excise & Service Tax, Jamshedpur.)

M/s. Ashirbad Enterprises
(Gua, West Singhbhum, Jharkhand.)

...Appellant

VERSUS

Commissioner of Central Excise & Service Tax, Jamshedpur
.....Respondent
(Outer Circle Raod, Bistupur, Jamshedpur, Jharkhand.)

<u>APPEARANCE</u>

Shri Sushil Kumar Goyal, C.A. for the Appellant (s)
Shri Tariq Suleman, Authorized Representative for the Revenue

CORAM: HON'BLE SHRI R. MURALIDHAR, MEMBER(JUDICIAL)
HON'BLE SHRI RAJEEV TANDON, MEMBER(TECHNICAL)

<u>FINAL ORDER NO. 77021/2024</u>

DATE OF HEARING : 17.09.2024
DATE OF DECISION : 17.09.2024

Per : R. MURALIDHAR :

The Appellant has filed this Appeal being agitated by the penalty of Rs.1,30,00,000/- under Section 78 and another penalty of Rs.5,000/- under Section 77.

2. The Ld.C.A. appearing on behalf of the Appellant submits that in the Show Cause Notice itself, it gets clarified that the amount of Rs.1,29,85,674/- has been paid in the normal course along with interest of Rs.25,10,951/-. He draws our attention to page No.4 of the Show Cause Notice and Para (i) and (ii) of the demand quantification. He points out that there is a proposal to appropriate Rs.1,29,85,674/- towards their Service Tax demand and proposal to appropriate Rs.25,10,951/- towards interest demand. However, while passing the impugned Order-in-Original the Adjudicating authority has failed to appropriate the same. The above facts clarify that the entire amount along with interest was paid much before the issue of the Show Cause

Notice and hence no penalty should have been imposed under Section 73(3). Accordingly, he prays that the present Appeal may be allowed by setting aside the penalty imposed on the Appellant.

3. The Ld.AR for the Department reiterates the findings of the lower authorities.

4. From the impugned order we find that the Adjudicating authority has not discussed anything whatsoever about the Appellant making the payments much before the issue of the Show Cause Notice nor has he discussed about the interest being paid before issue of Show Cause Notice which are all part of the Show Cause Notice. However, he has appropriated the amounts paid towards Service Tax and interest.

5. After going through the factual evidence placed by the Appellant we hold that appropriation of the demanded amount paid along with interest by the adjudication authority is correct and does not call for any interference from our side. However, we do not find any justification for imposing penalties on the Appellant by the Adjudicating authority. Accordingly, we set aside the penalties.

6. The Appeal stands allowed to the extent of setting aside the penalties.

(Dictated and pronounced in the open Court.)

Sd/
(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/
(RAJEEV TANDON)
MEMBER (TECHNICAL)

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