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

EASTERN ZONAL BENCH: KOLKATA

Appeal No. ST/75652/2017 & ST/75749/2017

(Arising out of Order-in-Appeal No. 15-16/DNB/2016-17 dt. 13/12/2016 passed by the Commissioner (Appeals) of Central Excise & Service Tax, Ranchi.)

M/s. Katras Ceramics & Refractories Pvt. Ltd. & Vikram Bole
Appellant (s)

Vs.

C.C.E. & S. Tax, Dhanbad Respondent (s)

Appearance

None for the Appellant
Shri S. Mukhopadhyay, Suptd. (A. R.) for the Revenue

CORAM:

HON'BLE SHRI P. K. CHOUDHARY, MEMBER (JUDICIAL)
Date of Hearing-19.02.2019
ORDER NO FO/75204-75205/2019
PER CORAM

This is the second round of Litigation before the Tribunal. In the earlier round, it was observed by the Tribunal that abatement of 75% was not given and accordingly the matter was remanded to the Original Adjudicating Authority. In the Denovo Proceedings, the Adjudicating Authority considered the applicability of the abatement and confirmed the demand amounting to Rs.4,23,730/- along with interest. This entire amount having been paid by the assessee was appropriated. However, penalties under Section 76, 77 & 78 were imposed on the appellant company and penalty of Rs. 5,000/- on the director of the appellant company.

2. Being aggrieved, appeals were filed before the Lower Appellate Authority. The Ld. Commissioner (Appeals) upheld the Adjudication Order and rejected the appeals. Hence, the present appeals before the Tribunal.

3. None appeared on behalf of the appellants despite notice.

4. I find that the case has been listed on board on a regular basis on various dates. Accordingly, the appeals are taken up for disposal with the consent of the Ld. DR.

5. Heard the Ld. DR and perused the appeal records.

6. I find that Service Tax was demanded under the category of 'Transport of Goods by Road' under the Reverse Charge Mechanism for the period from January 2005 to January 2009. There is no dispute that initially there were ambiguities regarding the payment of Service Tax by the service recipients under the Reverse Charge Mechanism and the assessees were in doubt regarding their liability to pay Service Tax.

I further observe that the Tribunal in various decisions consistently held that penalty should not be imposed under the given facts and circumstances.

7. On perusal of records, I do not find any ingredient of mis-statement, suppression of facts etc. with an intent to evade payment of Service Tax. It is seen from the records that appellant assessee did not dispute their liability to pay Service Tax and paid the entire amount of Service Tax and the same has also been appropriated.

8. In view of the above discussions, the penalties imposed upon the appellants are set aside. The appeals filed by the appellants are allowed.

(Dictated and pronounced in the open court.)

Sd/-
(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

Pooja