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

REGIONAL BENCH – COURT NO.2

Service Tax Appeal No. 76134 of 2015

(Arising out of Order-in-Original No.11/Commr/ST-II/Kol/15-16 dated 18.09.2015 passed by Commissioner of Service Tax-II, Kolkata.)

M/s. Tapasya Enterprises
(11A, Palm Avenue, Ballygunge, Kolkata-700019)

Appellant

VERSUS

Commr. of Service Tax-II
(180, Rajdanga, Main Road, Shantipally, Kolkata-700107)

R**espondent**

APPEARANCE :
None for the Appellant
Mr. Debariya Sue, Authorized Representative, for the Respondent
CORAM:
HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE MR. K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.77556/2024

Date of Hearing : 06 November 2024
Date of Decision: : 06 November 2024

PER R. MURALIDHAR:

No one has appeared on behalf of the appellant inspite of notice. It is observed that even intimation letters have been returned back by the Postal Authorities. In the interest of justice, the appeal is itself taken up for disposal with the help of the Learned AR.

2. We find from the appeal papers that the appellant is registered with the Service Tax Department and has been paying the Service Tax for rendering "Renting of Immovable Property Service". The dispute is on account of short payment of Service Tax to the extent of Rs. 1,22,99,805/- and excess Cenvat Credit taken to the extent of Rs. 3,78,913/-.

3. The Adjudicating Authority has given a detailed finding as to how the short payment has occurred, which is enumerated as under:-

I find that the noticee has calculated their service tax liability by suppressing the actual fact and without adding the TDS amount with rent income. They have not explained why they have not considered the TDS and not added the same with rent income at the time of calculation of service tax. On the other hand the said noticee expressed their reservation against the fact that in the SCN service tax has been calculated after adding, TDS. I also find that they could not justify their reservation by referring to any statute or legal backing. The value for charging Service Tax has been clearly prescribed in Section 67 (1) of the Finance Act, 1994. It stipulates that in a case where the provision of service is for a consideration in money, value of Taxable Service would be the gross amount charged by the service provider for such service provided or to be provided. Hence the TDS amount is also a component of the total consideration in the instant case. It matters little whether the assessee could lay their hands on the same immediately or not. In fact DGST in their publication of FAQ dated 16.09.2011 under Para 3.12 has addressed this issue comprehensively. The said Para is as follows:

3.12 When payment is made by a client to an assessee after deducting his Income Tax liability under the Tax deduction at source (TDS) provision, whether the Service Tax lability of the assessee is only towards the amount actually received from that client or tax is to be paid on the amount including the Income Tax deducted at source also?

Service Tax is to be paid on the gross value of taxable service which is charged by a Service Tax assesse for providing a taxable service. Income Tax deducted at source is includible in the charged amount. Therefore, Service Tax is payable on the gross amount including the amount of Income Tax deducted at source also.

Thus the inclusion of TDS amount in the SCN is completely proper and justified.

The other allegation in the said SCN was wrong availment of Cenvat credit of Rs. 3,78,913/- during 2009-10. It was alleged that the said noticee did not submit any CENVAT credit documents, therefore, utilization of said credit of Rs. 3,78,913/- during the FY 2009- 10 is *irregular. The said noticee stated that they have taken the said credit and the same was utilized by them after making payment of such service tax to the parties. As per Rule 9 of the Cenvat Credit Rules, 2004 the assessee can take CENVAT credit on the basis of authentic documents. But the said noticee failed to submit the authentic documents in support of their claim. In this context the noticee stated in their reply that they always maintained proper records including records related to Cenvat credit along with responding invoices and claimed that the invoices against which such Cenvat credit was taken have been submitted by them. But no such document in support of their claim was ever submitted. In absence of supporting documents the noticee has hindered the examination of the propriety of the credit and thus, their claim of paying a part of their due through Cenvat is not acceptable. Hence it is clear that an amount of Rs 3,78,913/-is to be recovered from/paid by the noticee along with interest.*

4. Since the appellant has not come out with any documentary evidence to counter the detailed findings of the Adjudicating Authority, we do not see any reason to interfare with the same.

5. We affirm the impugned order and dismiss the present appeal.

(Dictated and pronounced in the open court.)

Sd/-

(R. Muralidhar)
Member (Judicial)

Sd/-
(K. Anpazhakan)
Member (Technical)

Pooja