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

REGIONAL BENCH – COURT NO.2

Service Tax Appeal No. 75876 of 2015

(Arising out of Order-in-Original No. 01/Commr/ST-I/Kol/2015-16 dated 13.04.2015 passed by Commissioner of Central Excise & Service Tax, Kolkata.)

M/s The Statesman Limited,
(4, Chowringhee Square Kolkata, West Bengal-700001.)

..Appellant

VERSUS

Commissioner of CGST & Central Excise, Kolkata,
(180, Shantipally Rajdanga, Main Road, Kolkata-700107.

.. ...**Respondent**

APPERANCE :

Shri Vinay Shraff, Mr. Priya Sarah Pavi & Mr. Dev Agarwal, all Advocates for the Appellant
Shri A. K. Chowdhury, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. R. MURALIDHAR MEMBER (JUDICIAL)
HON'BLE MR. K ANPAZHAKAN MEMBER (TECHNICAL)

FINAL ORDER No...77627/2024

DATE OF HEARING : 11.09.2024
DATE OF DECISION : 11.09.2024

PER R. Muralidhar:

The appellants had obtained Service Tax Registration No. AABCT3842RST001 for the services rendered under the category of Renting of Immovable Property Service. After scrutiny of the guardianship and pre-handling account of the appellant for the period 2008-09 to 2012-13, a Show Cause Notice was issued to the appellant demanding Service Tax under the following category: (A) Income from Rent (B). Income from Facility Sharing (C). Business Income (D). Commission Received On the grounds that Service Tax was not paid for the consideration received under the above four headings, Show Cause

Notice was issued demanding a Service Tax payment of Rs.55,42,4676/-.

2. The appellants contended that the income from rent shown in the balance sheet consists of rent received on account of residential property as well as on account of letting out of the commercial properties.

3. In respect of the income received on account of facility sharing, the appellant submitted that this was only bifurcation of the expenses incurred between the connected units and was not any consideration paid by the sister unit. Similarly, the commission received was not in the nature of any Business Auxiliary Service. In respect of miscellaneous receipts, they submitted the Chartered Accountant's Certificate, showing that they are not liable for Service Tax payment.

4. However, the adjudicating authority, after going through the detailed reply filed by the appellant, has confirmed the entire demand excepting Rs. 7,93,480/-. Being aggrieved the appellant is before the Tribunal.

5. The Learned Counsel appearing on behalf of the appellant, submits that, though proper evidence was placed before the adjudicating authority, he has not considered the income received by the appellant from the residential property. Similarly, in case of facility sharing, income shown in their Balance Sheet is on account of the infrastructure provided by them to their sister concerns, on which no

profit margin was charged by the appellant. It was only sharing of the expenses. Though documentary evidence was placed before the adjudicating authority, the same was not considered. In case of miscellaneous receipts, almost the entire receipt is on account of trading and other selling activity on which no Service Tax payment is called for, but still the demand was confirmed. In respect of commission received, the same is not taxable under the category of Business Auxiliary Service.

6. He further submits that all the submissions made by the appellants were not properly considered vis-à-vis the documentary evidence placed by them, because of which a huge portion of the demand has been confirmed by the adjudicating authority. He submits that the appeal may be allowed on merits.

7. He further submits that nothing has been brought in in the Show Case Notice or in the impugned order to the effect that the appellant has suppressed the facts so as to evade payment of service tax. Hence, he submits that the confirmed demand for the extended period is liable to be set aside on account of time bar.

8. The Learned A.R. submits that the appellant, though had taken up the Service Tax Registration, was not paying the service tax nor were they filing the ST-3 Returns. Only after detailed scrutiny of the Balance Sheet and P&L account, the audit team could find that the appellants were receiving concentration under various heads like income from rent, income from facility sharing, business receipts and commission received, etc. He submits that the reply filed by the appellant, along

with the documentary evidence placed before the adjudicating authority, was properly considered by him. He has given due consideration to the Chartered Accountant's Certificate and, after finding the actual fact, has dropped the demand to the extent of Rs.7,93,480/-. Thus, he defends the confirmed demand.

9. Heard both sides, perused the appeal papers and the documentary evidence placed before us.

10. We find that the demand has been raised under four heads based on the balance sheet figures of the appellant. The appellant submits that the documentary evidence placed by them before the adjudicating authority has not been properly considered so as to finalize the demand amount. They submit that due to such non-consideration of the documentary evidence, the same has resulted in a hugely inflated confirmed demand of more than Rs.5 crores. On going through the impugned OIO, we find that the adjudicating authority has recorded the reply filed by the appellant on 20 May 2014 and the details of Personal Hearing granted on 25 June 2015, along with the documentary evidence placed by them during that time. It is also recorded about the personal hearing was granted on 11 May 2015. After this, at Para 3.3.1, he has gone into the details of the income from commission. At Para 3.3.2, he deals with the income from facility sharing. At Para 3.3.3, he has dealt with income from renting of immobile property. He has also gone through the Lease Deed and the details of the property let out to MGF Development Ltd and M/s MR MGF Pvt Ltd. At Para 3.3.4, he has also

gone through the miscellaneous income. He has considered the Chartered Accountant’s Certificate at Para at page 15 of the OIO.

11. As per the Table given at page 17 of the OIO, he has dropped the demand to the extent of Rs.7,93,480/- in respect of the miscellaneous income. Thus, we see that the Adjudicating Authority has followed the principles of natural justice and has given clear and detailed findings in respect of all the demands. The appellant has placed several documentary evidence before us claiming that these documents were not properly considered by the Adjudicating Authority. One such document is the table showing party-wise summary of rent received. The Learned Counsel submits that similar data and documentary evidence are ready with them and they are willing to submit the same to the Adjudicating Authority in case the matter is remanded to him for proper verification. We feel that in the interest of justice, the matter has to be referred to the Adjudicating Authority so that all the documentary evidence can once again be placed by the appellant before the Adjudicating Authority.

12. Coming to the appellant's submission that the Department has not made out any case of suppression, we do not find any merit in the same. Adjudicating Authority has recorded the findings at Para 3.2 of the OIO wherein the assessee himself has contended that they have taken the registration under one category only. Further, they have not made any payment of Service Tax nor they had filed any ST-3 Returns for the entire period 2008-09 to 2012-13. This being so, the

Department was completely oblivious of the activities of the appellant undertaking various services and not paying Service Tax on the same. Therefore, the appellant's contention that the Department has not made out any case of suppression does not stand legal scrutiny. We hold that the Revenue has rightly invoked the extended period and has issued the Show Cause Notice based on the balance sheet and pre-handled figures.

13. It is for the appellant to come out clean with all the documentary evidence in case they make their submission that they are not required to pay the Service Tax under various headings under which the Service Tax demand has been proposed and confirmed.

14. Accordingly, we remand the matter to the Adjudicating Authority to verify all the documentary evidence placed by the appellant before him. The appellant is directed to place all the documentary evidence for the entire period of five years and the Adjudicating Authority will pass a considered decision within four months from the date of receipt of this order since the issue pertains to the year 2008-09 to 2012-13

15. The appeal stands disposed of by way of remand to the Adjudicating Authority.

(Dictated and pronounced in the open court)

Sd/-
(R. Muralidhar)
Member (Judicial)

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

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