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

REGIONAL BENCH – COURT NO.2

Service Tax Appeal No.75009 of 2015

(Arising out of Order-in-Original No. 22/COMMR/ST/BOL/14/2321 dated 24.09.2014 passed by Commissioner of Central Excise & Service Tax, Bolpur)

M/s. Jai Balaji Industries
(Lenin Sarani, Durgapur-713210)

Appellant

VERSUS

Commr. of CGST & Central Excise, Bolpur
(Nanoor, Chandidas Road, Sian, Dist. Birbhum)

Respondent

APPEARANCE :

Mrs. Shreya Mundhra, Advocate for the Appellant
Mr. P. Das, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE MR. K. ANPAZKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.77700/2024

Date of Hearing : 25 November 2024
Date of Decision: 25 November 2024

PER R. MURALIDHAR:

Service Tax of Rs. 63,75,705/- was confirmed against the appellant. The appellant is not contesting the Service Tax payable and the confirmed demand. They are contesting the penalty imposed and proper appropriation of the Service Taxes already payable by them.

2. The Learned Advocate submits a reconciliation statement as per the following table.

- Total Demand as per Show Cause Notice **(A)** **= Rs.63,75,705/-**

- Undisputed Excess Amount Paid by the Appellant
  = 3,52,31,533 - 2,97,15,259 **(B)** = **Rs.55,16,274/-**
  (to be appropriated towards the demand).

- **Balance amount of demand (C) = (A) – (B)** = **Rs. 8,59,431/-**

- Incorrect figures of Service tax paid as per the SCN resulting in excess demand **(D)** = **Rs.4,54,073/-**
  (Admitted and undisputed vide Para 3.2 of the Order that Annexure to SCN refers to amount paid in Oct, 07 and Nov, 07 as **Rs.29,80,701/-** and **52,06,411/-** which should be **Rs.30,17,820/- and 56,23,365/-)**

- Balance amount of demand **(E) = (C) – (D)** = **Rs. 4,05,358/-**

- Amount of Service tax paid in excess in FY 2006-07 **(F)** = **Rs. 4,01,078/-**
  (Ref: CA Certificate in Pages 43 & 61 of paper-book)

- Balance amount **(G) = (E) – (F)** = **Rs. 4,280/-**

- Paid vide Challan dated 01.11.2013 **(H)** = **Rs. 4,280/-**
  (**Appropriated vide Order)**

- Balance payable **(I) = (G) – (H)** **= Nil**

3. She submits that out of Rs. 63,75,705/-, Rs. 55,16,274/- has already been appropriated in the order itself. Rs. 4,54,073/- is admitted in the Para 3.2 of the order itself saying that this is on account of difference in the amount calculated in the SCN and the correct amount to be calculated. Therefore, she says that Rs. 4,54,073/- is required to be properly appropriated against the confirmed demand. She also submits that they have paid Rs. 4,01,078/- in excess in the financial year 2006-07. For this, she submits a copy of the Chartered Accountant's Certificate. She submits that one challan for Rs. 4,280/- has been produced before the Adjudicating Authority and the same stands appropriated in the order. Thus the entire amount of Rs. 63,75,705/- stands paid.

4. She submits that the Adjudicating Authority has not considered the excess payment made by the appellant towards the tax dues on the ground that mechanism for such adjustment of excess payment

has been brought in vide Notification No. 4/2008 dated 1/3/2008 with effect from 1-3-2008. Therefore, the Adjudicating Authority has held that this provision cannot be applied for the past excess payments. She relies on the case law of Commissioner v. Fosroc Chemicals (India) Pvt. Ltd. -2015 (318) ELT 240 (Karnataka), wherein it has been held that amendment by substitution has a retrospective effect. She also relies on the case law of Jai Balaji Industries Ltd. CCE 2021 (7) TMI 1351 CSTAT Kolkata and Sujana Metal Products Ltd. v. Commissioner-2011 (9) TMI 724 CSTAT Bangalore. In view of these submissions, she prays that the entire amount paid against the confirmed demand should be taken as properly paid and should be appropriated by the Adjudicating Authority. Accordingly, she prays that penalties imposed under Section 76 and 77 of the Finance Act, 1994, may be set aside and the Appeal may be allowed.

5. Heard both sides and we have gone through the appeal papers and further submissions made by the appellant.

6. From the above table, given at Para 2, it is seen that the appellant has been able to reconcile the confirmed duty demand vis-à-vis the payments made by them under various headings. We find that the reconciliation is properly backed up by documentary evidence placed by the appellant.

7. With regard to the point made by the Adjudicating Authority about the amendment towards adjustment of excess Service Tax towards further liability brought in with effect from 1-3-2008, we find that the Honorable High Court of Karnataka in the case of **Commissioner of Central Access and Service Tax, Bangalore v. Fosroc Chemicals (India) Pvt. Ltd.-2015 (318) ELT 240 Karnataka,** has held as under:

> ***9.*** *What is the effect of "substitution" of a provision in the place of an existing one is no more res-integra. The Constitution Bench of the Hon'ble Apex Court in the case of Shamarao V. Parulekar v. The District Magistrate, Thana, Bombay &*

Others reported in AIR 1952 SC page 324, dealing with the scope of substitution of a provision by way of amendment held as under :-

“When a subsequent Act amends an earlier one in such a way as to incorporate itself or a part of itself into the earlier, then the earlier Act must thereafter be read and construed (except where that would lead to a repugnancy, inconsistency or absurdity) as if the altered words had been written into the earlier Act with pen and ink and the old words scored out so that there is no need to refer to the amending Act at all.”

8. We find that in the present case, it is not disputed that the appellant has paid excess service tax and which is clearly certified by the Chartered Accountant. Therefore, the beneficial provisions should be interpreted in such a way that the very benefit which is sought to be given to the assessee is not denied. The ratio of the cited case law is squarely applicable. Accordingly, we hold that the appellant has fulfilled the requirement of completing the entire payment of Service Tax as per the confirmed demand.

9. We set aside the penalties imposed and allow the appeal along with consequential relief, if any, as per law.

(Operative part of the order was pronounced in the open court.)

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

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

Pooja