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

REGIONAL BENCH – COURT NO. 2

Service Tax Appeal No. 75718 of 2015

(Arising out of Order-in-Appeal No. 45/SHE/CE(A)/GHY/2015 dated 31.03.2015 passed by the Commissioner (Appeals), Customs, Central Excise & Service Tax, Custom House, Nilamoni Phukan Path, Christian Basti, Guwahati – 781 005)

Shri Niranjan Saha **: Appellant**
Jail Road, Banamalipur,
Near Purbasha, Agartala,
Tripura (West), PIN – 799 001

VERSUS

Commissioner of Central Excise and Service Tax **: Respondent**
Shillong Commissionerate

APPEARANCE:

Shri Pranab Sikdar, Consultant for the Appellant

Shri P.K. Ghosh, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 77874 / 2024

DATE OF HEARING / DECISION: 17.12.2024

ORDER: [PER SHRI R. MURALIDHAR]

The facts of the case are that the appellant has provided various works contract services to M/s. Oil and Natural Gas Corporation Ltd. (ONGC), Tripura and some other private parties. The major portion of their revenue is from ONGC.

1.1. A Show Cause Notice was issued to them on 19.10.2013 for the period from 2008-09 to 2012-13 by invoking the extended period provisions. The said Notice was issued for an amount of Rs.22,71,929/-.

1.2. The ld. adjudicating authority, after giving due consideration to the submissions advanced by the appellant, reduced the demand and confirmed the demand of Rs.19,91,828/-.

1.3. Being aggrieved, the appellant filed their appeal before the Ld. Commissioner (Appeals) who has dismissed the same vide the impugned order.

2. Being aggrieved, the appellant is before the Tribunal.

3. The Ld. Consultant appearing on behalf of the appellant makes the following submissions: -

(i) The appellant has given a detailed reconciliation (produced at page 76 of the present appeal) for the gross amount realized by them, sales tax paid by them, sale of goods, etc., after which the Service Tax payable would be to the extent of Rs.20,58,946/-.

(ii) The Ld. Consultant for the appellant submits that the Show Cause Notice was issued purely on the basis of the balance sheet figures without considering the fact that the appellant rendered services towards road construction and had also sold goods on which VAT was duly paid and the value of such goods were also part of their total turnover.

(iii) He submits that the amount of Rs.20,58,946/- to be paid as Service Tax, has been paid by them in the normal course as per the table produced at page 76 of the appeal papers. It is submitted that the ld. adjudicating authority himself has brought down the demand from Rs.22,71,929/- to Rs.19,91,828/- paid by them in the normal course.

3.1. He also submits that the Show Cause Notice was issued in a belated manner by invoking the extended period provisions against them, purely based on the balance sheet figures without conducting any proper verification on their books of account. Hence, he prays that the impugned order be set aside even on account of limitation.

4. The Ld. Authorized Representative of the Revenue reiterates the findings of the ld. adjudicating authority. He submits that after due consideration of the evidence produced before him, the ld. adjudicating authority has re-quantified the demand as Rs.19,91,828/- as against the demand of Rs.22,71,929/- raised in the Notice. Therefore, he justifies the confirmed demand.

5. Heard both sides and perused the appeal papers.

6. We find that the issue is in a very short compass. Admittedly, the Revenue has issued the present Show Cause Notice purely based on the balance sheet figures without conducting any verification so as to arrive at the correct quantification of the demand. The appellant has undertaken road construction services, which are fully exempted. They have also supplied goods worth Rs.11.98 lakhs which are not exigible to Service Tax. However, all these figures have been included while quantifying the Service Tax demand. Though the appellant submitted the details of reconciliation before the ld. adjudicating authority, in the Order-in-Original, he is completely silent and has not given any finding on the details of

Service Tax paid by the appellant during the period from 2008-09 to 2012-13, which we feel ought to have been considered. Such amounts ought to have been appropriated against the confirmed demand. We find that against the demand of Rs.19,91,828/-, the appellant has paid Rs.20,58,946/- in the normal course. Therefore, we find that the impugned order is not legally sustainable.

6.1. The Ld. Consultant appearing on behalf of the appellant undertakes that they will not lay any claim for refund arising on account of the differential amount between Rs.20,58,946/- and Rs.19,91,828/-.

7. Since we are already taking the stand on merits that no case has been made out by the Department, we are not inclined to go into the limitation aspect of the issue raised by the appellant.

8. Consequently, we set aside the impugned order to this extent and allow the appeal with consequential relief, if any, as per law.

(Dictated and pronounced in the open court)

Sd/-
(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd