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

REGIONAL BENCH – COURT NO.2

Service Tax Appeal No. 75970 of 2021

(Arising out of Order-in-Appeal No. 39/HWH/ST/2021-22 dated 13.07.2021 passed by Commissioner of CGST & Central Excise (Appeals), Kolkata-II,

M/s Shree Balaji Traders & Engineers,
(Westend Conclave (B-11), 1st Floor, Flat No. B-11,
Serampore, Dankuni, Dist.- Hooghly, Pin-712331.)

..Appellant

VERSUS

Commissioner of CGST & Central Excise, Howrah,
(Bank of Baroda Building, Chandan nagar Station Road,
Dist.- Hooghly, WB-712136)

.. ...**Respondent**

APPERANCE :

Shri Amit Kumar, Advocate for the Appellant
Shri S. K. Jha, Authorized Representative for the Respondent

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

FINAL ORDER No...75689/2025

DATE OF HEARING : 11.02.2025
DATE OF DECISION : 11.02.2025

PER R. Muralidhar:

The appellant is provider of manpower service. They have taken registration under this category and we're also paying service tax for the services rendered by them. However, in respect of some consideration received by them, the appellant had not paid the Service Tax. A Show cause notice was issued on the ground that Service Tax of Rs.2,59,694/- has not been paid by them. The appellant submitted that while they have discharged the Service Tax, the consideration amount has not been paid by their clients. In respect of some clients, they have not received the billed amount from them. They submitted that the amounts were accounted for in the 26 AS by the client, but the clients had never paid these amounts to the appellant. Therefore, they did not pay the Service Tax. The adjudicating authority has confirmed the demand and imposed the penalty of Rs.2,59,694/-. Being aggrieved, the appellants have filed their appeal before the Commissioner (Appeals) who has dismissed their appeal. Being aggrieved, the appellants are before the Tribunal.

2. The Learned Advocate submits that before the OIO was passed, the appellant has paid an amount of Rs1,44,427/- along with penalty of Rs.36,107/- and interest of Rs.1,43,400/-. Subsequent to the issue of Order-in-Original, they have paid Rs.1,15,267/- and interest of Rs.135,772/-. He submits that the entire Service Tax amount has already been paid and interest of over Rs.2.8 lakhs has been paid and penalty of Rs.36,107/- has been paid. He also submits that no option to pay 25% of the penalty was given when the OIO was passed. In view of these submissions, he prays that the appeal may be allowed. In view of these submissions, he prays that the balance penalty may be waived.

3. The Learned Advocate reiterates the findings of the lower authorities. He submits that the amounts were paid towards Service Tax, penalty and interest, subsequent to the issue of Show Cause Notice. In fact, Rs.1,15,267/- as Service Tax and interest of Rs.1,35,772/- has been paid much after the OIO was passed. Therefore, he justifies the penalty imposed on the appellant.

4. Heard both sides and perused the appeal papers and the documents placed before me.

5. I find that the appellant though initially has opposed the demand on the ground that the clients have not made payments to them which has resulted in short payment, subsequently, they have made the payment of Service Tax. They are not disputing the Service Tax already paid by them. They are also not disputing the interest already paid by them. They have only agreed by the penalty imposed by them to the extent of Rs.2,15,994/-.

6. I find that the adjudicating authority was required to give an option in the OIO to the effect that the appellant is required to pay penalty of 25% if the same is paid within 30 days after confirmation of the demand under the OIO. This was not done by the adjudicating authority. This fact also has been overlooked by the Commissioner (Appeals) while passing the impugned OIA.

7. I find that the appellant has already paid 25% of the confirmed demand of Rs.1,44,427/- by paying penalty of Rs.36,107/- along with interest of Rs.1,43,400/-. Towards this Service Tax demand, I hold that the penalty paid is sufficient. So far as the balance Service Tax amount of Rs1,15,267/- is concerned, the appellant has already paid interests of Rs.1,35,772/-. Therefore, in such circumstances, I take the view that if the appellant pays 25% of service tax of Rs.1,15,267/-, that would

meet the requirement. Accordingly, I direct the appellant to pay the penalty of Rs.28,850/- being 25% of the Service Tax demand of Rs.1,15,267/- within 30 days from the date of communication of this order.

8. Thus, the appeal stands allowed partly.

(Dictated and pronounced in the open court)

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

Tushar Kr.