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

REGIONAL BENCH – COURT NO.1

Service Tax Appeal No.76370 of 2016

(Arising out of Order-in-Appeal No.38/ST/B-I/2016 dated 28.04.2016 passed by Commissioner (Appeals) of CGST & Central Excise, Bhubaneswar)

M/s D.Shankar Rao
(B.C.Road, At/PO-J.K.Pur, Dist.-Rayagada, Odisha-765017)

Appellant

VERSUS

Commissioner of CGST & Central Excise, Bhubaneswar
(C.R.Building, Rajaswa Vihar, Bhubaneswar-7, Odisha)

Respondent

APPERANCE :

Shri Surendra Nath Acharya, Consultant for the Appellant
Shri P.Das, Authorized Representative for the Respondent

CORAM:
HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR.K.ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.77335/2025

DATE OF HEARING : 19 AUGUST 2025
DATE OF DECISION : 19 AUGUST 2025

Per Ashok Jindal :

The appellant is in appeal against the impugned order.

2. Heard both the parties and considered the submissions.

3. We find that the demand of service tax has been confirmed against the appellant under the category of "Man Power Service" for the period 2007-08 to 2009-10 on the basis of TDS Certificate issued by the Income Tax Department and the contention of the appellant is that the TDS amount includes service tax component also. Therefore, the demand of service tax is reduced to that extent.

4. Further, during the impugned period, the rate of service tax was 10.3%, whereas the calculation of service tax has been made at the rate of 12.36%, which is not correct for the period 24.02.2009 to 31.03.2009. The appellant also submitted that they are not required to discharge service tax on payment of PF, ESI and Festival Advances etc., on which TDS has been deducted by the service recipient.

5. The ld.A.R. for the Revenue submits that the above contentions made by the appellant in support of their claim, have not been raised during the course of adjudication.

6. In that circumstances, we feel that it would be appropriate in the interest justice to remand back to the adjudicating authority with the direction to the appellant to provide the details/documents in support of their claim as prayed before us.

7. Therefore, we set aside the impugned order and remand the matter back to the adjudicating authority for denovo adjudication after giving a reasonable opportunity of hearing to the appellant to present their case and thereafter, pass an order in accordance with law.

8. Appeal is disposed off by way of remand.

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

(Ashok Jindal)
Member (Judicial)

(K.Anpazhakan)
Member (Technical)

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