IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT No. I

APPEAL No. ST/89298/2014

(Arising out of Order-in-Appeal No. AUR-EXCUS-000-APP-124-14-15 dated 25.6.2014 passed by Commissioner of Central Excise & Customs (Appeals), Aurangabad)

Nirlep Alliances Ltd. **Appellant**

Vs.

Commissioner of Central Excise, Aurangabad **Respondent**

Appearance:

Shri Mahesh Singhi, Manager, for appellant
Shri M.K. Sarangi, Joint Commissioner (AR), for respondent

CORAM:

Hon'ble Mr. Ramesh Nair, Member (Judicial)
Hon'ble Mr. Raju, Member (Technical)

Date of Hearing: 15.1.2018
Date of Decision: 11.5.2018

ORDER NO. **A/86357/2018**

Per: Ramesh Nair

Brief facts of the case are that the Appellants were made to make payment of service tax on "renting of immovable property services" for the period 2007 – 08 to 2012 – 13 in terms of the audit objection. The Appellant later filed refund claim of the same on the ground that the aggregate value of services is below the taxable limit as envisaged in Notification No. 6/2005 – ST and hence they are not liable to pay service tax. They were issued show cause notice that the rent agreement has not been submitted by them and copies of bills/ invoices not submitted by them to show that they have not passed on the service tax burden to their clients; the name of the party to whom the premises was rented was not appearing in ledger and the Appellant has two more units but no evidence has been given to show that the combined value of services of all units is below the exemption limit. The refund was rejected by the lower authority on the ground that they had paid tax on their own without contesting audit objection and also did not produce any evidence that they were covered by the threshold exemption. The Appellant filed appeal before Commissioner (Appeals) who rejected the same on the ground that the Appellant did not file reply to show cause notice and also that since the Appellant paid service tax inspite of exemption, hence cannot claim refund of service tax. The Appellant being aggrieved with the same has filed the present appeal.

2. Shri Mahesh Singhi, Manager for the Appellant submitted that the tax was paid on insistence of audit, hence cannot be said to be have deposited on own volition. That there is no other services except the impugned services and the aggregate value during the respective years remained below the taxable limit for which all evidences were submitted and hence refund is admissible to them.

Shri M.K. Sarangi, ld. Joint Commissioner (AR) reiterates the findings of the lower authorities and supports the said findings.

3. Heard both the parties and perused the records of the case. We find that the refund claim was filed by the Appellant for refund of the service tax which was paid at the time of audit. It is therefore clear that the amount of service tax paid on account of audit objection cannot be considered as to have been paid on own volition and the findings of the lower authorities in this regard are erroneous. As regard evidence to the effect that no reason was advanced by the Appellant to show why they were entitled to refund claim, we find that the Appellant had already produced the Balance Sheet, Copy of rent agreement and certificate from the service recipient that no service tax was charged to them by the Appellant. In such facts we hold that the Appellant is entitled for the refund of amount claimed by them subject to the condition that the evidence towards non charging of service tax amount from the service recipient is produced by them before the refund sanctioning authority who shall on being satisfied with the same shall sanction the refund claim.

4. The appeal is allowed by way of remand to the adjudicating authority in above terms.

(Pronounced in court on 11.5.2018)

(Raju)
Member (Technical)

(Ramesh Nair)
Member (Judicial)

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