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

Appeal No. ST/87568/2018

(Arising out of Order-in-Appeal No. NSK/CEX/000/APPL/ 355/17-18 dated 16.03.2018 passed by the Commissioner of Central Excise & Service Tax (Appeals), Nasik).

Shri Anil Ramesh Jadhav	Appellant

Vs.

Commissioner of Central Excise & Service Tax, Nasik	Respondent

Appearance:

Shri Akshay Sarda, C.S.	for Appellant
Shri S.B. Mane, AC (AR)	for Respondent

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)

Date of Hearing: 03.01.2019

Date of Decision: 03.01.2019

ORDER NO. **A/85008 / 2019**

Per: Dr. D.M. Misra

Heard both sides.

2. This is an appeal filed against Order-in-Appeal No. NSK/CEX/000/APPL/ 355/17-18 dated 16.03.2018 passed by the Commissioner of Central Excise & Service Tax (Appeals), Nasik.

3. Briefly stated the facts of the case are that during the relevant period 2010-11 to 2013-14, the appellant had received commissions from one M/s KBC Multi Trade Pvt. Ltd., Nasik for selling the various products like, Magnetic Pendant, Magnetic Bracelet, Holiday Packages etc. Since they failed to discharge Service Tax for 2012-13 and 2013-14 amounting to Rs.2,14,817/-, a show-cause notice was issued to them on 16.12.2015 for recovery of the said amount along with interest and penalty. On adjudication, the demand was confirmed with interest and penalty. Aggrieved by the said order, they filed an appeal before the learned Commissioner (Appeals), who in turn, rejected their appeal. Hence, the present appeal.

4. Learned Company Secretary for the appellant submits that the demand was confirmed against them on the basis of the amount of refund shown in Form 26AS filed under the Income Tax Act. It is his contention that even though M/s KBC Multi Trade Pvt. Ltd. deducted TDS amount against payment of commission of Rs.12,80,000/- and Rs.14,58,000/- for the financial year 2012-13 and 2013-14, but in fact the entire amounts were not received by them. The appellant has received only Rs.7,99,000/- and Rs.3,26,400/- respectively against the said amount. It is his contention that extending the benefit of threshold exemption allowed under Notification No. 33/2012-ST for the said period, there would not be any tax liability on the appellant. He submits that they have produced Bank's statements before the learned Commissioner (Appeals) in support of the aforesaid claims.

5. Per contra, the learned AR for the Revenue has submitted that before the adjudicating authority, the appellant accepted their liability and pleaded for leniency on penalty. They have not filed any reply to the show-cause notice being not part of the records. He submits that even though before the learned Commissioner (Appeals), they claimed that against the TDS amount deducted, in fact, they received lesser amount. No evidence was placed to substantiate the said claim. Consequently, the learned Commissioner (Appeals) rejected their said plea and upheld the order of the adjudicating authority.

6. The short issue involved in the present appeal for determination is whether the appellants are liable to discharge Service Tax for receiving the commission during the period 2012-13 and 2013-14 from M/s KBC Multi Trades Pvt. Ltd. The demand was confirmed by the Revenue taking into consideration the 26AS statement, wherein the amount received by them was reflected as Rs.12,80,000/- and Rs.14,58,000/- for the financial year 2012-13 and 2013-14. The claim of the appellant, on the other hand, that even though the said 26AS statement indicates that they have received the amount, but in fact, they have received less amount of Rs.7,99,000/- and Rs.3,24,000/-, which is much below threshold exemption limit of Rs.10.00 lakhs prescribed under Notification No. 33/12-ST, therefore, no Service Tax liability accrues on them. The contention of the appellant was rejected by the learned Commissioner (Appeals), observing that it was not raised before the adjudicating authority and also on the ground that no evidence was placed before him to substantiate the said claim. I find that before this forum also, the

appellant, though claimed that they have received lesser amount, no evidence has been placed to substantiate the said claim except bank statement of some account. In these circumstances, I do not find merit in the appeal. Consequently, the impugned order is upheld and the appeal is dismissed.

(Dictated and pronounced in the Court)

(Dr. D.M. Misra)
Member (Judicial)

Sinha