CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 88307 of 2018

(Arising out of Order-in-Appeal No. NSK-EXCUS-000-APPL-174-17-18-482 dated 05.02.2018 passed by the Commissioner of CGST & Customs (Appeals), Nashik)

M/s Rucha Engineers Pvt. Ltd. **.... Appellant**
Plot No. K-244/245, MIDC Area, Waluj,
Aurangabad – 431136.

Versus

Commissioner of CGST & Customs, Aurangabad **.... Respondent**
Town Centre, N-5, CIDCO, Aurangabad - 431030

Appearance:

None for the Appellant

Shri S.B. Mane, AC, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO. A/86403 / 2019

Date of Hearing: 16.08.2019

Date of Decision: 16.08.2019

Per: Dr. D.M. Misra

Heard the learned AR for the Revenue. The appellant through their letter dated 13.08.2019 requested to decide the case on the basis of material available on records.

2. This is an appeal filed against Order-in-Appeal No. NSK-EXCUS-000-APPL-174-17-18-482 dated 05.02.2018 passed by the Commissioner of CGST & Customs (Appeals), Nashik.

3. Briefly stated the facts of the case are that during the relevant period from July, 2012 to August, 2013, the appellant had received services under the category of Manpower Recruitment or Supply Agency Service from M/s Santosh Mohanrao Gaikwad, who is a proprietary firm. Since the appellant has failed to discharge Service Tax liability on 75% gross value of the taxable services received by them in accordance with Notification No. 30/2012-Service Tax dated 20.6.2012, a show-cause notice was issue to them for recovery of Service Tax amounting to Rs.1,98,569/- 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. The appellant in their grounds of appeal has submitted that the provider of Service Tax has paid the entire amount of Service Tax, which has been recorded by the adjudicating Commissioner in the impugned order. It is their contention that once the entire amount has been paid, recovery of Service Tax on 75% of the value of service from the appellant is unsustainable in law. In support, they have referred to the judgment of this Tribunal in their own case vide Order No. A/951/13/SMB/C-IV dated 5.12.2013 relating to discharge of duty on GTA service on reverse charge basis.

5. Learned AR for the Revenue reiterates the findings of the learned Commissioner (Appeals).

6. I find that the short issue involved in the present appeal is once the service provider has paid the entire amount of Service Tax, whether further Service Tax on 75% of the amount be recovered from the appellant, as service receiver in relation to Manpower Recruitment or Supply Agency Service. I find that the issue is no more *res integra* and covered by the judgment of this Tribunal in their own case vide Order No. A/951/13/SMB/C-IV dated 5.12.2013 albeit on GTA service tax liability discharged by service provider.

7. In view of the aforesaid precedent, there is no merit in the impugned order. Consequently, the same is set aside and the appeal is allowed.

(Dictated and pronounced in open court)

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

Sinha