CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

Service Tax Appeal No: 87892 of 2014

[Arising out of Order-in-Appeal No: NGP/EXCUS/000/APP/055/14-15 dated 9th April 2014 passed by the Commissioner of Central Excise & Customs (Appeals), Nagpur.]

Vanshree Intelligence Security Service … ***Appellant***
Door No. 10/2, Pension Nagar, Behind Police Line, Takli, Katol Road, Nagpur – 440 013

versus

Commissioner of Customs, Central Excise & Service Tax …***Respondent***
Civil Lines, Telankhedi Road, Nagpur – 440 001

WITH

Service Tax Appeal No: 88453 of 2014
&
Service Tax Cross-Objection No. 91139 of 2014

[Arising out of Order-in-Appeal No: NGP/EXCUS/000/APP/055/14-15 dated 9th April 2014 passed by the Commissioner of Central Excise & Customs (Appeals), Nagpur.]

Commissioner of Customs, Central Excise & Service Tax … ***Appellant***
Civil Lines, Telankhedi Road, Nagpur – 440 001

versus

Vanshree Intelligence Security Service …***Respondent***
Door No. 10/2, Pension Nagar, Behind Police Line, Takli, Katol Road, Nagpur – 440 013

APPEARANCE:

Shri Vikal O Chachra, Advocate for the appellant

Shri Dilip Shinde, Assistant Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: A/87505-87506 / 2019

DATE OF HEARING:	10/06/2019
DATE OF DECISION:	29/11/2019

PER: C J MATHEW

This appeal arises out of order-in-appeal no. NGP/EXCUS/000/ APP/055/14-15 dated 9th April 2014 of Commissioner of Central Excise & Customs (Appeals), Nagpur which has modified the order of the original authority confirming demand of ₹ 35,88,804/-, as provider of 'security agency services' for the period from 2006-07 to 2010-11, along with interest thereon under section 75 of Finance Act, 1994, while imposing penalty under section 76 on the amount of duty not discharged and penalty of like amount under section 78 of Finance Act, 1994. In modifying the order, the first appellate authority extended the benefit of 'cum-tax' assessment for the computation of value under section 67 of Finance Act, 1994.

2. According to Learned Counsel for appellant, the show cause notice dated 17th October, 2011 renders the demand for the period that is yet to be computed to be barred by limitation of the normal period.

3. Learned Counsel submits that the show cause notice itself is based entirely on the information furnished by the appellant during the course of investigation and that they had been filing returns on time.

4. Learned Authorised Representative submits that the appellant had been registered since 1999 and cannot, therefore, claim to be ignorant of the tax provisions. It is also submitted that the returns were filed only for the period from April to September 2006 and that the rendering of service, or the liability to tax thereon, has not been contested at any stage by the appellant.

5. One of the submissions made before the first appellate authority was that there has been a mis-calculation of the duty liability for the period from 2006-07 to 2010-11 when, even if the recording of income be on accrual basis, taxability itself, till 31st March 2011, was on receipts basis. The plea of limitation adduced by Learned Counsel does not find favour with us as the appellant should have discharged tax liability and reflected the discharge thereof, or the lack, in regular returns. It is on record that the returns had not been filed and this, coupled with the failure to pay the tax, would render the claim of absence of suppression to be unacceptable. Accordingly, we find that the tax liability is sustainable.

6. We take note that the first appellate authority has extended the benefit of 'cum-tax' for valuing the taxable service. No evidence has

been placed on record to show that the claim of subsequent receipts has been accounted in the computation of tax on accrual basis.

7. In the light of the above, we find no justification to interfere with the impugned order and accordingly appeals are dismissed.

(Pronounced in open court on 29/11/2019)

(C J Mathew)
Member (Technical)

(Ajay Sharma)
Member (Judicial)

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