CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

Service Tax Appeal No: 85567 of 2015

[Arising out of Order-in-Original No: GOA-EXCUS-000-COM-004-2014-15 dated 30th September 2014 passed by Commissioner of Customs, Central Excise & Service Tax, Goa.]

Commissioner of Customs, Central Excise & Service Tax
ICE House, EDC Complex, Patto, Panaji, Goa … ***Appellant***

versus

Mahalsa Service
Antique Mardol Building, Near, IBP Petrol Pump,
Verna, Goa ***…Respondent***

APPEARANCE:

Shri M Suresh, Joint Commissioner (AR) for the appellant

Shri CS Biradar, Advocate for the respondent

CORAM:

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

FINAL ORDER NO: A/87586 / 2019

DATE OF HEARING: 09/07/2019
DATE OF DECISION: 09/07/2019

PER: C J MATHEW

We note that this appeal of Revenue against order-in-original no. GOA-EXCUS-000-COM-004-2014-15 dated 30th September 2014 of

Commissioner of Customs, Central Excise & Service Tax, Goa can be disposed of on the primary issue raised in the grounds.

2. We find that the impugned order has proceeded on the assumption that the demand proposed in the show cause notice is ₹ 61,13,920 for the period in dispute as seen from

> *‘23. The brief facts of the case is that M/s. Mahalsa Services rendered Manpower supply services to their clients by providing contract labourers at various work sites and Industrial Units. But, they have failed to pay Service Tax on the taxable value received by them during the period 01.06.2008 to 30.03.2010. They have also not filed Service Tax returns during the period. Accordingly, a case was registered by DGCEI and the present Show Cause Notice was issued demanding Service Tax of Rs. 61,13,920/-along with the proposal of demanding interest and penalties under Section 76,77 and 78 of the Finance Act, 1944.’*

3. It is seen that the adjudicating authority has concluded this to be so, as the difference between their liability and the payment made by them, thus

> *‘24. I find that M/s. Mahalsa Services has not disputed their liability of Service Tax payable on the Manpower supply services rendered by them. From the records of the case, it is observed that M/s. Mahalsa Services have registered with the Service Tax Department and filed Service Tax returns up to March 2008. Thereafter, even though they have paid part of the Service Tax payable during the period 01.04.2008 to 31.03.2010, they have not filed Service Tax returns during the*

> *period. During this period their total Service Tax liability was Rs. 1,84,07,196/- out of which they have paid Rs. 1,22,93,276/- in cash. Thus the short payment of Service Tax during the period was Rs. 61,13,920/-. These facts have been admitted in the Show Cause Notice also. During the course of investigation and before issue of the Show Cause Notice, M/s. Mahalsa Services have paid further Service Tax of Rs. 60,00,000/- towards their Service Tax liability. They have paid the remaining service tax of Rs. 1,13,920/- after issue of the Show Cause Notice. From the facts narrated above, it is observed that M/s. Mahalsa Services have paid part of their Service Tax liability during the period 01.04.2008 to 31.03.2010. The remaining part of Service Tax short amounting to Rs. 60,00,000/- was also paid by them during the course of investigation when the short payment was pointed out by DGCEI. Thus the short payment remained to be paid at the time of issue of Show Cause Notice was only Rs. 1,13,920/- which was paid by them after issue of Show Cause Notice. The Show Cause Notice has been issued demanding Service Tax of Rs. 61,13,920/-. Short paid by them, excluding the service tax paid by M/s. Mahalsa Services, during the normal course. This short payment was not in dispute. In view of the above findings, I confirm the Service Tax of Rs.61,13,920/- short paid by M/s. Mahalsa Services during the period i.e. 01.04.2008 to 31.03.2010. I also appropriate the Service Tax of Rs.60,00,000/- and Rs. 1,13,920/-paid by them subsequently towards their above liability.'*

4. It was pointed out by Learned Authorised Representative that corrigendum dated 6th January 2015 made changes, to reflect the demand of ₹ 2,04,95,171 proposed by the show cause notice, in the narration of facts before commencement of discussion and findings and

imposed the penalty under section 77 of Finance Act, 1994.

5. We have heard Learned Authorised Representative and Learned Counsel for the respondent.

6. The impugned order merely suggests that the respondent herein had admitted to the liability which had been discharged before the issue of show cause notice and proceeded to conclude the proceedings without any further discussion. That may not have been inappropriate had the discussion and findings proceeded on the correct placement of facts. The rectification of the facts, leading to the discussion and findings, after the issue of the impugned order is clear indication that the facts were not properly considered while recording the discussion and findings. The manner in which the final tax liability was computed has not been explained by the adjudicating authority.

7. In view of the above, it would appear that a fresh adjudication is warranted for which purpose we set aside the impugned order and remand the matter back to the original authority for disposal of the show cause notice in accordance with law.

(Pronounced in open court)

(Ajay Sharma)	**(C J Mathew)**
Member (Judicial)	***Member (Technical)***

**/as*