

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL, MUMBAI
REGIONAL BENCH
COURT No.**

Service Tax Appeal No. 85246 of 2023

(Arising out of Order-in-Appeal No. SD/068/ST/APPL/NGP/2022-23 dated 26.07.2022 passed by the Commissioner of CGST & Central Excise (Appeals), Nagpur)

Umesh Tilak Yadav

Appellant

House No.968, Saoner Road,
Kharparkheda, Datta Nagar,
Millan Chowk, Teh. Saoner
Distt. Nagpur, Maharashtra

Vs.

Commissioner of Central Excise, Nagpur

Respondent

GST Bhavan, Civil Lines,
Telangkhedi Road, Nagpur 440 001.

Appearance:

Shri Mahesh Raichandani, Advocate, for the Appellant
Shri Badhe Piyush Barasu, Deputy Commissioner, Authorised
Representative for the Respondent

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER
(TECHNICAL)

Date of Hearing: 22.09.2023
Date of Decision: 08.11.2023

FINAL ORDER NO. 87105/2023

PER: ANIL G. SHAKKARWAR

Brief facts of the case are that the appellant is a professional player of cricket. He is registered with Service Tax. On 26.06.2020, appellant was issued with a show cause notice. It was stated in the said show cause notice that for the year 2014-15, there was difference of Rs.1,97,71,881/- between the returns filed by the appellant as income shown in ITR and the value of service shown in ST returns for the same period. Therefore, it appeared to Revenue that the said difference is on account of value of services rendered by the appellant on which service tax was not paid. Therefore, through the said show

cause notice, service tax of Rs.24,43,804/- was demanded and proposals were made for imposing penalties under various sections. On contest, the original authority dropped the demand and concluded proceedings. For dropping the demand, the original authority relied on ruling by Hon'ble Calcutta High Court in the case of Saurav Ganguly vs. UOI reported at 2016 (43) STR 482 (Cal.). The original authority has given a clear finding that service tax cannot be demanded from the present appellant on the grounds stated in the subject show cause notice. Aggrieved by the said order, Revenue preferred appeal before Commissioner (Appeals). Learned Commissioner (Appeals) in para 12 of the impugned order has held that in the instant case there was no issue of taxability of service tax, but the issue was regarding difference of Rs.1,97,71,881/- towards income shown in income tax return vs. value shown in ST returns. Learned Commissioner (Appeals) has set aside the order-in-original and allowed the appeal filed by Revenue. Aggrieved by the said order, appellant is before this Tribunal.

2. Learned counsel for the appellant has submitted that the entire demand is based on difference in ST-3 returns and income tax return and that the demand is raised without examination of the books of accounts and, therefore, the said demand is bad in law. Learned counsel for the appellant has submitted that there should have been examination of the record and the nature of transactions and Revenue should have established that the said transactions were in respect of provision of service. He has submitted that nowhere in the show cause notice, it is established that the difference is consideration received for providing any service. He has relied on various decisions of this Tribunal such as Commissioner vs. Modern Road Makers Pvt. Ltd. decided by this Tribunal through final order No. 86160/2023 dated 28.07.2023, Lord Krishna Real Infra Pvt. Ltd. vs. Commissioner reported at 2019 (2) TMI 1563 – CESTAT Allahabad, Sharma Fabricators & Erectors Pvt. Ltd. vs. Commissioner reported at 2017 (7) TMI 168 – CESTAT Allahabad and Go Bindas Entertainment Pvt. Ltd. vs. Commissioner

reported at 2020-TIOL-890-CESTAT-ALL. He has further submitted that in all the above stated decisions of this Tribunal, it was held that only on the basis of difference between the figures reposted in ST return and income tax return, it cannot be presumed that the difference is on account of provision of service and only by calculating the service tax leviable on the said value without further examination of the activities of the appellant and without examination of the transactions, service tax cannot be demanded.

3. Heard the learned AR who has supported the impugned order.

4. We have carefully gone through the record of the case and submissions made. The demand was raised invoking the provisions of sub-section (1) of Section 73 of Finance Act, 1994. The said provision of Finance Act empowers Revenue for recovery of service tax which has not been levied or which has not been paid or which has not been short levied or which has not been short paid or which has been erroneously refunded. Therefore, the first step for Revenue is to establish that a specific amount to be demanded through show cause notice by invoking the said provision is service tax either not paid or short paid or not levied or short levied. Therefore, it is essential to establish that the value on which such service tax is calculated is the value under Section 67 and the same is derived from the consideration received by the appellant out of the activity which has to satisfy definition of service under sub-section (44) of Section 65B of Finance Act, 1994. Such type of examination of the facts and arriving at the prima facie view that the appellant had received the consideration by providing service is missing in the show cause notice. We, therefore, hold that the said show cause notice dated 26.06.2020 is not sustainable in law.

5. We, therefore, set aside the impugned order and allow the appeal.

(Order pronounced in the open court on 08.11.2023)

(Anil G. Shakkarwar)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

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