
(2024) 04 CESTAT CK 0042

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 50711, 50957 Of 2018

M/S. Scientific Security Management Services Private Limited
And Others

APPELLANT

Vs

Principal Commissioner of Central Goods & Service Tax, Delhi
III And Others

RESPONDENT

Date of Decision : 26-04-2024

Acts Referred:

Finance Act, 1994 — Section 73(4A)

Citation : (2024) 04 CESTAT CK 0042

Hon'ble Judges : Dr. Rachna Gupta, Member (J); Hemambika R. Priya, Member (T)

Bench : Division Bench

Advocate : Abhas Mishra, Rajeev Kapoor

Final Decision : Allowed

Judgement

Dr. Rachna Gupta, Member (J)

1. This order disposes of two cross appeals arising out same Order-in-Original bearing No. 02-17-18 dated 13.11.2017. The appellant herein is engaged in providing various taxable services as that of "Security Agency Service", "Manpower Recruitment Agency Service", ATM Operations etc. The department gathered intelligence that the appellants had wrongly claimed the value of reimbursement (pure agent), exemption and abatement during the Financial Year 2010-11 to 2014-15 by wrongly declaring the value of pure agent. The appellant, on demand, had submitted the copy of service tax returns for the said period. The scrutiny thereof and after the proper calculation, the department was of the opinion that the appellant has not paid the service tax amounting to Rs.7,80,56,949/-. Accordingly, the said demand was raised vide Show Cause Notice No. 2848 dated 22.04.2016 proposing the recovery of the said amount along with the appropriate interest and the proportionate penalties prescribed under the Finance Act. Subsequent thereto, the corrigendum was issued on

20.05.2016 proposing the recovery of service tax for an amount of Rs.10,57,06,598/- along with the appropriate interest and the proportionate penalties. While adjudicating the said show cause notice, the original adjudicating authority had considered the appellant as a pure agent, accordingly, has dropped the demand of Rs.9,01,16,183/-. However demand for service tax of Rs.1,55,90,415/- is still confirmed for want of requisite evidence for the Financial Year 2010-11 to 2014-15 has been dropped.

2. we have heard Shri Abhas Mishra, learned Advocate for the assessee and Shri Rajeev Kapoor, learned Authorized Representative for the department.

3. Learned counsel for the appellant has mentioned that the show cause notice is absolutely barred by limitation. The merits of the matter need not to be looked into as the show cause notice stands vitiated for want of not complying with the principles of limitation. Learned counsel has submitted that it is nowhere denied that the assessee was regularly filing service tax returns. The same has been recorded even in the show cause notice itself and subsequently in the Order-in-Original. Once the service tax were regularly filed, the allegations of suppression as has been confirmed by the original adjudicating authority cannot sustain and there remains no reason with the department to invoke the extended period of limitation. Learned counsel also impressed upon that for the period 2008-09 to 2012-13 DGCEI Delhi Zone had already taken up the investigation and service tax amounting to Rs.10,89,63,769/- was demanded. The entire liability was discharged by the assessee by making the payment even prior the issuance of show cause notice. Resultantly, the proceedings were closed in terms of Section 73(4A) of Finance Act, 1994. Nothing new has come up in the present investigation/show cause notice. There is no different allegation. For this reason also the suppression of facts cannot be alleged against the assessee. The show cause notice is prayed to be vitiated on the ground of wrongly invoking the extended period of limitation.

3.1 As far as the merits are concerned, learned counsel has mentioned that before the original adjudicating authority he had produced the entire relevant record. However, the documents pertaining to the demand of Rs.1,55,90,415/- were in the form of sample invoices. The assessee was under bona fide impression that even sample invoice would suffice for proving its case for the entire period qua the entire amount of demand. However, the actual invoices and other relevant documents are mentioned to be available with the assessee who has requested time to produce the same on record. It is submitted that in light of those documents remaining demand as confirmed is not sustainable. Order under challenge is therefore prayed to be set aside and appeal is prayed to be allowed.

4. While rebutting these submissions learned Departmental Representative has mentioned that though there is no denial about regular filing of service tax returns by the appellant but there are noticed differences in the service tax returns submitted by the assessee and the returns which were downloaded from ACES. Hence, it was the case of suppression. The order under challenge has

confirmed the said suppression and has held that extended period of five years is invocable in the given set of circumstances. With respect to the documents as mentioned by the assessee, learned Departmental Representative has mentioned that those documents were not before the departmental adjudicating authority, hence the matter may be remanded back for the proper appreciation of the said documentary evidence. Learned counsel for the assessee has endorsed no objection for the same.

5. Having heard both the parties.

6. We observe from the show cause notice following also to be the allegations in Para 10, 11 and 12 thereof. The paragraphs are reproduced below:

"10. Besides, in the year 2010-11 (Oct-Mar), gross amount in the ST-3 Return submitted by complainant is Rs.44,46,51,998/- and gross amount in ST-3 Return submitted by the assessee is Rs. 45,84,04,293/-. The value of pure agent shown in the ST-3 received from the assessee is Rs. 7,69,20,250/- while the ST-3 downloaded from the ACES is showing Rs. 3,39,07,085/- as value of pure agent. In this regard, it appears that the information given by the complainant along with documentary evidence is not matching with the ST-3 Returns filed by the assessee.

11. Further, in the year 2011-12 (Apr-Sep), gross amount in the ST-3 Return submitted by complainant is Rs.47,49,80,619/- and gross amount in ST-3 Return submitted by the assessee is Rs. 50,44,19,351/-. ST-3 Return downloaded from the ACES is showing Rs. 59,13,23,695/- as gross value and Rs. 5,47,34,546/- as value of pure agent. Value of pure agent is Rs. 8,74,65,659/- and the value of pure agent in ST-3 received from the assessee is Rs. 11,27,59,067/-. In this regard, it appears that the information given by the complainant along with documentary evidence is not matching with the ST-3 Returns filed by the assessee.

12. Also, in the year 2011-12 (Oct-Mar), gross amount in the ST-3 Return submitted by complainant is Rs. 62,79,04,453/-and gross amount in ST-3 Return submitted by the party is Rs. 61,82,49,784/-. ST-3 Return downloaded from the ACES is showing Rs.63,40,98,000/- as gross value and Rs.4,69,93,576/- as value of pure agent. Value of pure agent in the forged and altered ST-3 Return is Rs. 5,89,93,576/-and the value of pure agent in ST-3 received from the party is Rs.15,49,68,709/-. Hence, it appears that the assessee is not declaring the true value of claim of reimbursement.

7. The Order-in-Original is observed to be silent about these allegations/ observations in the show cause notice though the extended period is held to be invocable. These allegations also have factual basis which need appreciation of the returns and other related documents. Hence we do not deem it appropriate to decide the plea of limitation without appreciation of the documentary evidence which has been produced by the appellant at this stage before the Tribunal. The said documents need to be appreciated by the original adjudicating authority

itself. Both the parties otherwise have acknowledged consents for remanding back the matter.

8. In totality of the entire above discussion, we deem it proper that the original adjudicating authority shall decide the show cause notice afresh after giving the appropriate findings with respect to the allegations of suppression and misrepresentation and thus about the invocation of extended period of limitation. The authority shall be giving fresh findings on merits as well, after looking into the additional documents specifically with respect to the demand confirmed (Rs.1,55,90,415/-). Matter thus is remanded for de novo adjudication. Resultantly, both the appeals stands allowed by way remand.