(2024) 11 CESTAT CK 1278

In the Customs, Excise And Service Tax Appellate, New Delhi

Case No : Service Tax Appeal No. 50412 of 2024

M/s. South Eastern Coalfields Limited @APPELLANT @Hash Commissioner of CGST Customs and Central Excise @RESPONDENT

Date of Decision : 06-11-2024

Acts Referred:
Finance Act, 1994 — Section 75, 78

Citation : (2024) 11 CESTAT CK 1278

Hon'ble Judges : Binu Tamta, Member (J);P. V. Subba Rao, Member (T)

Bench : Division Bench

Advocate : Rajeev Agarwal, Rajeev Kapoor

Final Decision : Allowed

Judgement

Binu Tamta, J

1. M/s. South Eastern Coalfields Limited, The Appellant has assailed the order-in–original no.14/COMMR/ST/IND(AUDIT)/2023-24 dated 03.01.2024, whereby the service tax amounting to Rs.10,76,44,875/- was confirmed along with interest and penalty under Section 75 and 78 of the Finance Act,1994, FA, 1994 respectively.

2. Facts of the case are that during the course of an audit, the figures of ST-3 Returns filed during the period, April 2015 to June 2017, was compared with the ledger account balance appearing in the Trial Balance for the said period. On the basis of the comparative figures as appearing in the Trial balance and the ST-3 Returns, the difference in the two set of figures indicated the value of taxable services on which due service tax was not paid by the appellant. These values pertained to the Works Contract Services, Legal Consultancy Services and Security Services received by the appellant, where they were liable to pay service tax under the Reverse Charge Mechanism and also the renting of immovable property service rendered by them. Show cause notice dated 15.07.2020 was issued demanding a sum of Rs.52,92,65,538/-. The Adjudicating Authority by the impugned order confirmed only the demand of service tax of Rs.10,76,44,865/- along with interest and penalty and dropped the demand in

respect of the balance amount. Hence, the present appeal has been filed before this Tribunal.

3. We have heard Shri Rajeev Agarwal, the learned Counsel for the appellant and Shri Rajeev Kapoor, the Authorised Representative for the Revenue and have perused the records.

4. Shri Rajeev Agarwal, learned Counsel for the appellant submitted that the entire demand is solely based on the difference in the value of Ledger Accounts and the corresponding figures as reported in ST-3 Returns without even examining the nature of the entries in the alleged Ledger Accounts, and without examining whether such amounts are for taxable services received or rendered. The learned Counsel has relied on the decisions of this Tribunal in Go Bindas Entertainment Pvt Ltd. Vs. CST, Noida, 2019 (27) GSTL 397 (Tri.-All.), M/s Kush Constructions Vs. CGST, Nacin, ZTI, Kanpur, 2019(24) GSTL 606 (Tri.-All.) and also, in their own case, M/s. South Eastern Coalfields Ltd. According to him, the ratio of the said decisions is clearly applicable in the facts of the present case.

5. Referring to the decision in M/s.Vandana Global Ltd. Vs. Commissioner of CGST, Central Excise & Customs, Raipur, Excise Appeal No.53026 of 2018 [Final Order No.51135/2022 dated 02.12.2022], the learned Counsel submitted that invoking the extended period of limitation on the ground that non-payment could not have come to their knowledge had the audit not been conducted by the Department is unsustainable. He also submitted that on the principle of revenue neutrality, the extended period is not invocable as the appellant was entitled to avail and utilise the credit of service tax paid under RCM against its output, excise duty on coal. Reference was invited to the decision of the Hyderabad Bench in Asmitha Microfin Ltd. Vs. Commissioner of Customs, Central Excise & Service Tax, Hyderabad-III, 2020 (33) GSTL 250 (Tri.-Hyd.),which was passed on the basis of the decision of the Apex court in Jet Airways (India) Ltd. Vs.Commissioner, 2017 (7) GSTL J-35 (SC). The learned Counsel then referred to the settled position of law that there is a presumption that PSUs do not have any intention to evade the payment of tax as held by the Tribunal in the case of M/s.Burn Standard Co. Ltd. Vs. CCE, 2007 (216) ELT 77(Tri.) and which was earlier upheld by the Apex Court in Commissioner of Central Excise, Chennai – 1 Vs. Chennai Petroleum Corporation Ltd, 2007 (211) ELT 193 (SC). He accordingly, prayed that the appeal may be allowed.

6. The learned Authorised Representative for the Department reiterated the findings in the impugned order. According to him since both the service provider and the service recipient are separately registered under the Act and maintained separate books of account, the appellant was required to pay the appropriate service tax on the same under RCM. On the balance amount under WCS, the appellant failed to establish whether the condition regarding not availing the CENVAT credit is complied with. On the issue of renting of immovable property services, the submission of the appellant is that it is for residential purpose and hence no service tax is payable. However, they failed to submit any evidence in

support thereof. Similarly, the excess amount reflecting in the ledger on account of legal service, the appellant failed to submit any supporting documents. The appeal, therefore deserves to be dismissed.

7. The issue whether service tax can be demanded on the basis of the difference in the figures as reflected in the Trial Balance and ST-3 Returns is no longer res-integra as submitted by the learned Counsel for the appellant referring to the decisions in Go Bindas Entertainment Private Limited (supra) and M/s Kush Constructions (supra), where it has been held that no demand can be confirmed by comparing the ST-3 Returns with balance sheet figures in the absence of any evidence to prove the same that income in the balance sheet reflects the providing of taxable services. Since it is the Revenue, who is making the allegations as such the onus to prove the said allegation lies heavily upon the Revenue. We may also refer to the decision in the case of Principal Commissioner, CGST Vs. SBI Life Insurance Company Ltd, (2024 –TIOL-202-CESTAT-Mumbai), where also the Tribunal reiterated the principle that demand or penalty on the basis of difference between ST-3 Returns and Income Tax Returns of any period without further examination to establish the differences on account of consideration received towards the charge of services cannot be sustained. Following the said principles, the Learned Single Member of the Tribunal in the case of the appellant titled as South Eastern Coalfields Ltd Vs. Commissioner of Central Excise and Service Tax, Raipur, Final Order No.54519-54520/2024 dated 29.02.2024 (S.T Appeal No.54902-54911 of 2023) decided the issue observing that mere difference in figures appearing in the Trial Balance as compared to the ST-3 Returns without any corroborative evidence that taxable services had indeed been provided by the appellant cannot be upheld. We accordingly conclude, that no service tax demand can be raised on the appellant on this account.

8. The other submission of the learned Counsel for the appellant is based on the principle of revenue neutrality. The Tribunal in the case of Asmitha Microfin Ltd. (supra) has already held that the entire demand is under reverse charge mechanism, and if the applicant had paid the service tax, they would have been entitled to Cenvat credit of exactly the same amounts and, therefore, the revenue neutrality is evident. Referring to the decision of the Apex Court in Jet Airways (India) Ltd. that extended period of limitation cannot be invoked in revenue neutral cases, it was held that the entire demand is hit by limitation and is accordingly set aside. Same principle would apply in the present case and there is no reason to differ from the same as the entire demand proposed in the show cause notice falls within the extended period of limitation and, therefore, is liable to be set aside. The show cause notice dated 15.07.2020 has been issued for the period April 2015 to June 2017, and hence, the entire demand is beyond the normal period of limitation, however, the extended period of limitation has been invoked on the ground that the non-payment would not have come to knowledge had the audit not been conducted. Reference has been made to the decision in M/s Vandana Global versus Commissioner (Appeals) CGST, Central

Excise and Customs, Raipur, where it has been held that it is not correct to say that had the audit not been conducted, the alleged errors in assessment would not have come to light because they would have come to light if the officers had scrutinised the returns and called for any data or records which they needed. The fact that audit has pointed out the alleged mistakes only shows that the officers have not scrutinised the Returns properly. Thus, the extended period of limitation cannot be invoked in the present case, and therefore the demand being barred by limitation is unsustainable. The learned Counsel for the appellant has challenged the imposition of penalty under Section 78 of the Act on the principle that there is a presumption that Public Sector Undertakings do not have any intention to evade the payment of tax as held in Burn Standard Company Ltd and Chennai Petroleum Corporation Ltd (supra). The same principle is applicable in the case of the appellant which is Public Sector Undertaking and hence, no penalty can be imposed under Section 78 of the Act.

9. In view of our discussion above and the law laid down in the earlier decisions, we hold that the impugned order cannot be sustained and is, therefore, set aside. The appeal is, accordingly allowed.

[Order pronounced on 6th November, 2024]