**(2021) 10 CESTAT CK 0084**

**In the Customs, Excise And Service Tax Appellate Tribunal**

**Case No :** Service Tax Appeal No. 85029 Of 2016

M/s. Varad Fertilizers Pvt. Ltd. APPELLANT

Vs

Commissioner Of Central Excise, Nagpur RESPONDENT

**Date of Decision :** 28-10-2021

**Acts Referred:**
Finance Act, 1994 — Section 76, 77, 78, 80

**Citation :** (2021) 10 CESTAT CK 0084

**Hon'ble Judges :** Dr. Suvendu Kumar Pati, J;Sanjiv Srivastava, Technical Member

**Bench :** Division Bench

**Final Decision :** Allowed

## Judgement

1. This appeal is directed against order in appeal No NGP/EXCUS/000/APP/387/15-16 dated 15.10.2015 of the Commissioner Customs, Central Excise & Service Tax (Appeals), Nagpur. By the impugned order, the Commissioner (Appeals) has held as follows:

"ORDER

a) Order in original No 17/ST/AC/2014-15 dated 09.10.2014 passed by the Assistant Commissioner, Central Excise Division Nanded is modified to the extent that demand of Rs 50,058/- along with interest on the same and penalty of equivalent amount imposed under Section 78 is set aside.

b) The demand of Rs 19,119/- along with interest and equivalent amount of penalty under Section 78 is upheld.

c) The penalties imposed under Section 76 and Section 77 of the Act are also upheld."

2.1 A show cause notice dated 25.11.2013 was issued to the Appellant where in para 7 following has been stated:

"7. Whereas, it further appears that during the period from 01.07.2012 to

 

31.12.2012 the assessee paid 3,09,245/- to M/s. S.M.K Security, Anand Plaza, Shop No. 10/11, Opp Govt. Milk Dairy, Jalna Road, Aurangabad. Under the reverse charge mechanism as detailed above, the assessee was required to pay service tax on the 75% of the gross value i.e. 3,09,245/- which they failed to do. From the copies of bills submitted by the assessee, it becomes clear that during the month of July, 2012 to October, 2012 the service provider charged service tax @ 12.36% whereas under the reverse charge mechanism the assessee should have themselves discharged the service tax liability @ 9.27%. On being pointed out the assessee discharged their service tax liability @ 9.27% for the period November, 2012 to May, 2013 amounting to Rs. 29,972/- along with interest vide challan No. 01/2012-13 dated 21.06.2013. The charging of Service tax @ 12.36% by the service provider in their bills cannot be termed as payment of service tax on the part of the assessee, when they were required to discharge the same on their own under the reverse charge mechanism. Thus, the amount of Service Tax of Rs. 19,119/- on the total value of Rs. 1,54,684/ (75% of 2,06,245/-) paid by towards security and charges during the period July, 2012 to October, 2012, is recoverable from them."

2.2 On the basis of charges in para 4, the Show Cause Notice demanded the service tax short paid by them along with the interest and proposed imposition of penalty under Section 76, 77 & 78 of the Finance Act, 1994.

2.3 The show cause notice was adjudicated by the Assistant Commissioner, confirming the demand of Service tax along with interest and imposed separate penalties under Section 76, 77 & 78 of the Finance Act, 1994.

2.4 Appellants filed appeal before the Commissioner (Appeal) which was disposed of by the Commissioner (Appeal) as per impugned order referred in para 1 supra.

2.5 Aggrieved Appellants have filed this appeal.

3.1 The matter was listed for hearing on 28.10.2021, when none appeared for the appellant. Taking note of the fact that amount in the appeal is too meagre and there is no dispute on the leviability of the service tax, the matter has been taken for consideration after hearing Shri Dilip Shinde, Assistant Commissioner, Authorized Representative for the revenue.

3.2 Authorized Representative reiterated the findings recorded in the impugned order.

4.1 We have considered the impugned order along with the submissions made in appeal and during the course of argument. 4.2 Interestingly we note that para 7 of the Show Cause Notice, records-

".....From the copies of bills submitted by the assessee, it becomes clear that during the month of July, 2012 to October, 2012 the service provider charged service tax @ 12.36% whereas under the reverse charge mechanism the assessee should have themselves discharged the service tax liability @ 9.27%.

 

On being pointed out the assessee discharged their service tax liability @ 9.27% for the period November, 2012 to May, 2013 amounting to Rs. 29,972/- along with interest vide challan No. 01/2012-13 dated 21.06.2013. The charging of Service tax @ 12.36% by the service provider in their bills cannot be termed as payment of service tax on the part of the assessee, when they were required to discharge the same on their own under the reverse charge mechanism. Thus, the amount of Service Tax of Rs. 19,119/- on the total value of Rs. 1,54,684/ (75% of 2,06,245/-) paid by towards security and charges during the period July, 2012 to October, 2012, is recoverable from them."

4.3 Show notice notes and admits that service tax was charged on the full value of service received by the appellant, by the service provider i.e. M/s S M K securities, on the invoices/ bills and has been paid by the appellant to them. In such a case where the service provider himself is registered with the department and has collected the service tax from the appellant, then where is the question for demand to be made under reverse charge mechanism from the appellant.

4.4 We find the appellant has from very beginning claimed that they discharged the service tax liability due from them for the relevant period. Commissioner (Appeal) has in para 14 and 15 of the impugned order observed as follows:

"14. With regards to the issue of Service Tax liability on "Security & Manpower Supply" under Reverse Charge Mechanism, I find that payments were made during the period 01.07.2012 to 31.10.2012 to M/s S M K Security, Aurangabad wherein the Service tax @ 12.36 % was charged by the Service Provider and recovered from the appellant. However under RCM w.e.f 01.07.2012 service recipient has to pay service tax on 75% amount but being a new provision service provider charged service tax on full amount and the appellant paid as per bill amount and service provider SMK securities paid to Government account. Hence the case is revenue neutral.

15. I find that as per appellant the amount Rs 29,972/- has been paid by the appellant for the period 01.07.2012 to 31.10.2012, but the lower adjudicating authority has stated that the said amount was paid for the period 1.11.2012 to 31.05.2013 and the duty liability for the period 01.07.2012 to 31.10.2012 is still pending and is liable to be recovered from the appellant."

4.5 We are not in position to agree with the approach of the Commissioner (Appeal). If in respect of the same transaction service tax has been paid by the service provider then there cannot be an occasion for demanding the same from recipient of service under reverse charge mechanism. Further in respect of the claim of payment of the service tax by the appellant, Commissioner (Appeal) has rejected the claim, by taking the note of the observations made by the adjudicating authority.

4.5 In our view a proper verification of the claim made by the appellant in respect of service tax liability in respect of these transactions has to be undertaken. If the appellant claim for payment of the service tax is found correct then the same should be recorded accordingly and proceedings initiated against them by the show cause Notice dated 25.11.2013 should be dropped in totality. In case the same is not found to be correct, then appellant then this amount along with interest be recovered from them.

4.6 However we make it clear that the all the authorities have noted that the provisions were introduced newly, hence even in case the claim of the appellant in respect of payment tax during the relevant period cannot be established then also the no penalties should be impose in term of Section 76, 77 or 78 of Finance Act, 1994, and should be waived of in terms of Section 80, ibid.

5.1 In view of the discussions as above the appeal filed by the appellants is allowed and matter remanded back to original authority for causing the verification of the claim made by the appellant in respect of payment of service tax during the period 01.07.2012 to 31.10.2012 either by them under reverse charge mechanism, or by the service provider.

5.2 Since the matter is of year 2012, and the amount involved is also very meagre, adjudicating authority should cause the proper verification within two months of the date of receipt of this order, after following the principles of natural justice.

(Order pronounced in the open court)