(2024) 07 CESTAT CK 1516

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

Case No : Service Tax Appeal No.55309 of 2023

M/s. Vijay Kumar Golechha APPELLANT

Vs

Commissioner of C.G.ST., Customs and Central Excise, Raipur RESPONDENT

Date of Decision : 02-07-2024

Acts Referred:
Finance Act, 1994 — Section 77(1), 77(2), 78

Citation : (2024) 07 CESTAT CK 1516

Hon'ble Judges : Ashok Jindal, Member (J)

Bench : Single Bench

Advocate : Varun Gaba, Rohit Issar

Final Decision : Allowed

Judgement

Ashok Jindal, J

1. The appellant is in appeal against the impugned order wherein demand of service tax of Rs.11,43,587/- along with interest has been confirmed and penalties under Section 78, 77(1) and 77(2) were also imposed.

2. The facts of the case are that the appellant is engaged in an activity of Electrical Contractor and providing Works Contract Service in relation to transmission and distribution of electricity on sub-contractor basis to M/s. Chhattisgarh State Power Distribution Company Limited (CSPDCL), State Government Enterprises. On the basis of data provided by CBIC, New Delhi gathered from Income Tax Department, it was found that appellant has declared receipts towards provision of service amounting to Rs.1,55,44,741/- during the period April 2015 to June 2017 and neither paid service tax nor filed ST-3 returns. Therefore, the show cause notice dated 18.09.2020 was issued to demand service tax from the appellant for the period April 2015 to June 2017 by invoking extended period of limitation to demand service tax along with interest and to levy penalties under the Finance Act, 1994. After considering the defense of the appellant, the demand has been reduced to Rs.11,43,587/- along with the

interest and penalties under Section 78, 77(1) and 77(2) were imposed. Aggrieved from the said order, the appellant is before me.

3. Today, when the matter was heard, learned counsel for the appellant contested matter only on limitation and not on the merits. It is his submission that in the facts and circumstances of the case, extended period of limitation is not invocable as in the year 2014 a clarification was sought by the association of which appellant is also one of the Member from the Revenue whether the activity undertaken by the members of association is being sub-contractor and providing the service of transmission of electricity for M/s. CSPDCL is liable to service tax or not. Vide letter dated 28.07.2014, it was clarified that no service tax is payable, further also clarified vide letter dated 30.07.2014 that the activity of sub-contractor is no liable for service tax. It is his submission that an investigation was also started with the appellant and in 2016 an query was raised on the appellant on 15.07.2016, with regard to non-payment of service tax for their activity undertaken by the appellant. The said query was answered by the appellant and further again query was raised by letter dated 16.08.2016 which was also anwered by the appellant on 24.08.2016 and thereafter no proceedings were initiated against the appellant except by issuance of the show cause notice dated 18.09.2020 by invoking the extended period of limitation. The learned counsel for the appellant has also produced the copy of one of the contract which shows that the tender amount was without service tax.

4. On the other hand, learned Authorized Representative oppose the contention of the appellant saying that the activity of the appellant was known to them that they are liable to service tax as per their tender document which has added the amount of service tax at the rate of 12.36% As the activity of the appellant was known to the appellant that it is taxable service, in that circumstance, extended period of limitation is rightly invoked. He further submitted that if activity of the appellant is not taxable and appellant was registered as service tax provider but no service tax return was filed by the appellant, if appellant had bona fide intention, he would have filed the ST-3 return in time and would have claimed the exemption as per clarification given to them. In these circumstances, extended period of limitation is rightly invoked. He has also relied upon the decision of this Tribunal in the case of Ghanshyam Transport Vs. Commissioner of Central Excise & Customs, Vadodara reported as 2008 (12) STR 554 (Tri.-Ahmd.) and Rajesh Vs. Assistant Commissioner of CGST and Central Excise, Chennai reported as (2023) 11 CENTAX 62 (Mad.)

5. Heard both the sides and considered their submissions.

6. The short issue involved in this matter is whether in the facts and circumstances of the case that extended period of limitation is invocable or not?

7. It is the submission of the learned Authorized Representative that as appellant was registered with service tax but not filing ST-3 returns, therefore, extended period of limitation is rightly invoked. To support its contention, he relied on the

decision of Rajesh (supra) and Ghanshyam Transport (supra). On going through these judgments, I find that as assessee was not filing returns and not registered with the service tax department but when investigation was started it was alleged that they are providing taxable service but not registered with the department. In that circumstances, it is true that extended period of limitation is invocable.

8. But the facts of the case are somehow different as in this case the vital question to decide that extended period of limitation is invocable or not, is the investigation conducted against the appellant in the Year 2016 itself wherein certain communications were exchanged between the appellant and the department for asking certain documents and why they are not paying service tax on their activity. But thereafter, no action has been taken against the appellant within time bound period and only after 4 years a show cause notice has been issued to the appellant. Further, a clarification was also sought which was answered that on the activity undertaken, no service tax is payable. Further, the issue involved in this case, whether they are liable to pay service tax or not was also referred to the third member to deciding the issue. As there is a difference of opinion between the members of this Tribunal, whether the activity undertaken by the appellant is taxable or not. As observed in the case of Commissioner Vs. K. Ramchandra Raoo Transmission and Projects Ltd. reported as 2021 (44) G.S.T.L. J18 (Tri. Hyd.)

9. As the activity undertaken by the appellant itself under doubt whether it is taxable or not and investigation was conducted against the appellant in 2016 itself.

10. In these circumstances, the extended period of limitation is not invocable. Therefore, I hold that show cause notice issued to the appellant is barred by limitation.

11. In these terms, I set aside the impugned order and allow the appeal with consequential relief, if any.

[Dictated and pronounced in the open Court]