(2021) 12 CESTAT CK 0049

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 53463 Of 2018

M/s.Rajasthan Urban Infrastructure Finance And Development Corporation Limited — APPELLANT

Vs

Commissioner Of Central Excise And Service Tax — RESPONDENT

Date of Decision : 22-12-2021

Acts Referred:
Finance Act, 1994 — Section 65(65), 66(105)(r), 75, 78

Citation : (2021) 12 CESTAT CK 0049

Hon'ble Judges : Anil Choudhary, J

Bench : Single Bench

Final Decision : Allowed

Judgement

1. The issue in this appeal is --

(A) Rejection of input tax credit --

(i)

DP Khandelwal & Co.

Rs. 3,780/-

(ii)

N.K. Buildcon

Rs. 55,282/-

Totalling

Rs.59,062/-

Whether the cenvat credit has been rightly disallowed for the reason of non-submission of service tax invoice or some information was missing.

(B) Allegation of suppression of turnover/non-disclosure of true turnovers in the

Service Tax Return.

Thus, tax allegedly short paid Rs.5,55,450/-.

(C) Invocation of extended period of limitation, - whether correctly done.

(D) Levy of interest under Section 75 and penalty under Section 78.

2. The brief facts are that the appellant is a State Government Undertaking of the Government of Rajasthan, located at Town Planning Building, JLN Marg, Jaipur is engaged in providing “Management Consultancy Service” as defined under Section 65 (65) read with Section 66(105) (r) of the Finance Act, 1994.

3. As regards the amount of Rs.3,780/- , the ld. Counsel urges that the appellant received professional services from Chartered Accountant vide Order of the Government No.F.25(1) /RUIFDCO/ACCOUn/Statutory Accounts/2008-2009/2589 dated 13.10.2009, which was approved by the Principal Secretary. A copy of the office order signed by Principal Secretary has been annexed in Appeal paper book, which reflects the amount of service tax @ 10.3% of Rs.33,000/- or Rs.3,399/-, and thus, the total sanctioned amount payable was Rs.36,399/-. Further, the ld. Counsel states that they have deposited service tax of Rs.3,780/- (including cess), under Reverse Charge Mechanism and hence, the credit has been rightly taken.

4. So far the service received from N.K. Buildcon is concerned, they are registered under Service Tax Registration No.CER/R/VIII/GPR/04 having PAN No.AAACN6668G, wherein the service tax has been duly deposited by M/s. NK Buildcon, who has provided the services/preparation of City Development Plans for Barmer, Jaisalmer and Churu Town. Ld. Counsel refers to the copy of the letter dated 01.09.2008 written to Executive Director of the appellant by N.K. Buildcon, wherein they have stated the total contract price, less the amount already received by them, and the remaining amount. The said letter also mentions that invoice for final bill is submitted herewith. Ld. Counsel further mentions that the credit was taken as per invoice of the service provider. However, due to shifting of their office, their documents have got mis-placed, which they have not been able to trace. Under such facts and circumstances, the credit may be allowed.

5. Ld. Authorised Representative relies on the impugned order.

6. Considering the rival contentions on this issue, I allow the cenvat credit of Rs.3,780/- with respect to the input service already received from the D.P. Khandelwal & Co. So far the credit for service tax of Rs.55,282/- received from N.K. Buildcon is concerned, I remand to the Original Adjudicating Authority with directions-if the assessee produces a certificate from N.K. Buildcon in support of this amount along with reference to Bill and Invoice No., the Adjudicating Authority shall accordingly allow this credit. So far issue No.(B) is concerned, the ld. Counsel has demonstrated that there is no apparent discrepancy during the financial years 2008-2009, 2009-2010, 2010-2011, wherein the value of taxable

service is matching with the amount as per ST Returns. Only for the financial year 2007-2008, the amount of turnover as per Profit & Loss Account is Rs.1,20,19,759/-. Whereas as per Service Tax Return, taxable turnover is Rs.33,36,079/-. Thus, there is apparent difference in the taxable turnover of Rs.86,83,680/-. Ld. Counsel states that during the said financial year, they had exempted turnover (not liable to service tax) Rs.1,15,92,729/-.If the amount of exempted turnover is added with the taxable turnover, the total amount comes to Rs.1,49,28,808/-, which is more than the amount of turnover as per Profit & Loss Account. Ld. Counsel also draws my attention to the copy of the ST-3 Returns for 2007-2008, wherein for the Return for the first half year, they have shown exempted turnover in Col.II (j) under the head – 'Gross Amount for which bills /invoices/challans are issued relating to services provided /to be provided (including export of service and exempted service)' Rs.59,71,800/- and similar amount is shown in the return for the second half year, Rs.56,20,929/-. Thus, totalling Rs.1,15,92,729/-. Thus, there is no discrepancy in the turnover disclosed to the Department and the allegation in the show cause notice is bad, as the Revenue has failed to refer to the Return filed by the appellant, which are borne on the record of the Department.

7. Having considered the arguments of both the sides on this issue, I find that the appellant has successfully reconciled their turnover figure as per Profit & Loss Account and as per taxable turnover in the Service Tax Return. Accordingly, this ground is allowed and the demand of Rs.5,50,450/- is set aside.

Ground C & D

8. I further find that the appellant is a State Government Undertaking, where 100% shares are owned by the State Government through the Governor of the State. The appellant maintains proper books of accounts, which are subjected to audit. There may be some clerical error in maintaining their records, or as stated, the documents got mis-placed due to shifting of the office. Further, the appellant is working as a nodal agency for the Government Project(s) and are not a Commercial Organisation in the true sense. Further, there is no allegation of suppression or any falsification of the accounts. From the allegations and facts on record, it is observed that these are attributable to the clerical error and lack of proper reconciliation at the time of audit, and before the court below.

9. In this view of the matter, I hold that the extended period of limitation is not invokable. Accordingly, penalty under Section 78 is set aside.

10. To sum-up, the appeal is allowed and only the issue as regards cenvat credit of Rs.55,282/- (N.K. Buildcon) is remanded to the Original Adjudicating Authority, as directed hereinabove. Thus, the appeal is allowed.

[Order pronounced on 22.12.2021]