(2021) 10 CESTAT CK 0035

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 50642 Of 2020

Rajiv Jalwal APPELLANT

Vs

Commissioner (Appeals), Central Excise And Central Goods And Service Tax, Jaipur RESPONDENT

Date of Decision : 13-10-2021

Acts Referred:

Finance Act, 1994 — Section 66B, 65(19), 68, 78
Service Tax Act, 1944 — Section 78

Citation : (2021) 10 CESTAT CK 0035

Hon'ble Judges : Rachna Gupta, J

Bench : Single Bench

Final Decision : Partly Allowed

Judgement

1. The appellants herein was working as Direct selling agent (DSA) for various financial institutions namely M/s. India Bulls Housing finance Limited, M/s. HDB Financial Services Ltd., M/s. PNB Housing Finance Ltd. Indusind Bank Limited, M/s. Reliance Home Finance Limited, M/s. Fullerton India Credit Company Limited and M/s. Finsol Enterprises. It was providing taxable service to these institutes in relation to selling of their loan products to their customers. The appellants used to receive commission from these institutes for providing the said services. Based upon the data received from Income Tax Department, the Department investigated the matter after getting information as that of copies of 26AS, ITR, etc. for the financial year 2010-2011 to 2016-2017. The Department formed the opinion that the commission as received by the appellant was taxable in terms of sub section 19 of 65 of Finance Act. Accordingly, recovery of Rs. 16,97,595/- for the period from 01.04.2013 to 31.03.2017 was proposed to recover from the appellant vide Show Cause Notice No.9505 dated 3/5.10.2018. The said proposal was initially confirmed vide Order-in-Original No. 15/378/2018 dated 21.12.2018. The appeal thereof was rejected vide Order-in-Appeal No. 404/2019 dated 25.11.2019. Being aggrieved the appellant is before the Tribunal.

2. Heard the arguments made by Shri Yash Dhadda, learned Counsel for the Appellant and Shri Mahesh Bhardwaj, Authorised Representative for the Department.

3. It is submitted on behalf of the appellant that the appellant was absolutely not aware about the Service Tax liability on the services being rendered by the appellant to various financial institutions. It is submitted that there otherwise was a confusion till 01.07.2012 as to whether the impugned services are Business Auxiliary service or not. It is due to the said reason that appellant did not get himself registered under Service Tax regime. The moment he was informed about his liability by the Department, he got himself registered on 22.08.2016. Learned Counsel also impressed upon that the entire amount of demand in question along with the amount in interest and penalty was got deposited by the appellant within 30 days of the issuance of the impugned show cause notice. It is submitted that the authorities despite acknowledging and admitting the same as correct have wrongly confirmed the impugned demand. The question of imposition of penalty utmost does not at all arise in the given circumstances. Order under challenge is accordingly, prayed to be set aside. Appeal is prayed to be dismissed.

4. While rebutting the submissions learned Authorised Representative has mentioned that as per the appellants own submissions the entire demand, the amount thereof stand deposited by the appellant, no second reason is mentioned by the appellant to deny the said liability. The payment accordingly, was not under protest, but rather amounts to the admission of liability towards the impugned demand. It is further submitted that there is no infirmity even when penalty is imposed upon the appellant. Because admittedly the appellant has been providing the taxable services to the financial institutes since the period even prior to 2010-2011 but did not get himself regisetered till the year 2016. The investigation against him was supported by the Department. Hence, it is clear that if there had been no investigation, the appellant was not inclined to acknowledge his tax liability, same has rightly been held to be suppression on his parts. Imposition of penalty also is therefore justified, praying for upholding the order under challenge, learned Authorised Representative has prayed for dismissal of the appeal.

5. After hearing the rival contentions and perusing the record, I observe and held as follows:

The statements of the appellant was recorded on 13.12.2017 who stated that even vide letter dated 31.10.2018, the appellant had brought to the notice of the Department the fact that as soon as the tax liability of the appellant with respect to the services as DSA being given to financial institutes came to his notice, he immediately took the registration and started paying by all efforts to discharge service tax liability. He voluntarily deposited the entire service tax liability of Rs. 16,97,595/- along with interest of Rs.626679/- vide Challan dated 13.12.2017, 30.12.2017, 15.05.2018 and 31.10.2018. The amount of Rs. 254639/- as 15%

of penalty was also got deposited vide Challan dated 31.10.2018. This perusal no doubt reveals that the entire demand along with the interest and the penalty got deposited by the appellant within a period of 30 days from the issuance of show cause notice. But the admitted fact remains that the appellant was running the impugned services for the period prior to 2010 but got the service tax registration only in August 2016. The services being rendered by the appellant are defined under section 65(19) of Finance Act, 1994. When the provision is read with section 68 thereof, it becomes clear that service was taxable and the appellant was liable to pay the service tax. There has been a major change in Finance Act with effect from 01.07.2012 by virtue of negative list under section 66B of the Act was provided. It was held that the services which are not covered under the said list are taxable. Apparently, the services of DSA to Financial institute is not mentioned in the said negative list nor any exemption for the same is brought to the notice. The appellant did not get himself registered immediately after 01.07.2012. He applied and got registration only in August, 2016 when the services were under scrutiny by Income Tax department. This particular fact is sufficient to hold that the plea of unawareness and confusion as taken by the appellant is not unavailable to him. The act of delaying the registration till it was actually pointed by the Department, is sufficient to hold that the appellant was wilfully abstaining his service tax liability. Hence, I do not find any infirmity in the order under challenge.

6. It is abundantly clear that the appellant was providing taxable service which is chargeable to service tax in terms of section 66B of the Finance Act, 1994. The appellant cannot be allowed to plead ignorance of law. Otherwise also the said liability has not been contested by the appellant as the entire demand stand already deposited that too without protest.

7. The only issue still to be adjudicated is imposition of penalty. Irrespective of the fact that the appellant has paid the amount demanded along with the interest within 30 days of the issuance of show cause notice but same does not absolve him from imposition of penalty. 15% of the penalty has still to be paid by the appellant in terms of proviso to Section 78 of the Service Tax Act, 1944. No doubt the said amount also stands already paid. in terms of proviso to section 78 of the Finance Act, proceedings against the appellant be deemed to be concluded. I observe that the same has been held by the Original Adjudicating Authority itself. Still, the penalty has been imposed for an amount to the extent of 100% amount of demand. The said order has been confirmed by the order under challenge as well. Keeping in view the admission for liability and proviso to section 78 of the Finance Act, I confirm the entire demand except that the order of imposition of penalty is directed to remain confined to 15% of the total demand instead of it being @ 100% of the amount of demand. In view of entire above discussion, order under challenge stands accordingly modified. Consequent thereto, the present appeal is hereby ordered to be partly allowed.

(Pronounced in the open Court on 13.10.2021)

