

**IN THE CUSTOMS, EXCISE AND SERVICE TAX
APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. II**

Excise Appeal No. 51781 of 2017- SM

[Arising out of Order-in-Appeal No. BHO-EXCUS-001-APP/77-17-18 dated 31.07.2017 passed by the Commissioner, Customs, Central Excise & Service Tax, Bhopal (MP)]

M/s. DB Corp Ltd.

Appellants

Vs.

**Commissioner of Central Excise
Bhopal**

Respondent

Appearance:

Shri Sandeep Mukherjee, CA for the Appellants
Shri K Poddar, DR for the Respondent

CORAM:

Hon'ble Shri Ashok Jindal, Member (Judicial)

Date of Hearing /decision: 07.03.2018

FINAL ORDER NO. 50867 /2018

Per Ashok Jindal:

The appellant is in appeal against the impugned order wherein the demand of service tax on differential amount has been confirmed against the appellant.

2. Brief facts of the case are that the appellant, for the period 01.10.2012 to 31.3.2013, filed ST-3 return wherein they have shown the figure as Rs. 67,83,503/- instead of Rs. 27,13,679/-. Due to this incorrect figures written in ST -3 return, the amount of abatement was mis-calculated. Consequently, the show cause notice was issued to the appellant to demand service tax on the differential value of the duty shown in the ST-3 return. The show cause notice was issued to the appellant and the adjudicating authority confirmed the demand. Later on, an appeal was filed before learned Commissioner (Appeals). Learned Commissioner (Appeals) held that the appellant did not provide any data in support of their claim. Therefore, he also dismissed the appeal. Against the said order, the appellant is before me.

3. Learned Counsel appearing on behalf of the appellant submits that there was a clerical error in data provided in ST-3 return and if the correct data is taken into consideration, the appellant has correctly discharged their service tax liability after availing the abatement. In these circumstances, the demand is not sustainable. He further submitted that as there was delay in payment of service tax, demand of interest has been confirmed for the period, when the cheque was presented for payment of service tax till it was credited in the account of Government treasury. It is his contention that date of payment is date of presentation of cheque, same view was taken in the case of ***Travel Inn India Pvt. Ltd. vs. CST, Delhi [2016 (41) STR 236 (Tri- Del)]***. Therefore, demand of interest is not sustainable on the appellant.

4. On the other hand, learned AR opposed the contention of the learned Counsel and submitted that there was clear finding of the learned Commissioner (Appeals) in the impugned order that appellant has not provided CA certificate or records for verification whether there was factual error in entering the correct data in ST -3 return or not. Therefore, they are not entitled for the benefit.

5. Heard both the parties. Considered the submissions.

6. I have gone through the impugned order and perused the record. In the impugned order learned Commissioner (Appeals) has recorded a finding that appellant has not provided any documents in support of their claim. The impugned order was passed on 31.7.2017 whereas all the relevant documents had been produced before the Commissioner (Appeals) on 5.7.2017. The acknowledgement receipt of the same is reproduced below.

To,
The Superintendent (Appeals),
O/o the Commissioner(Appeals),
Bhagya Bhawan, 178, Zone - II,
MP Nagar, Bhopal

Sub.: Appeal by DB Corp Limited, numbered 545 - ST
Ref.: Hearing in this regard on 23.06.2017

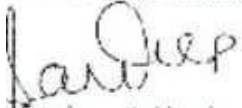
Madam,

In this regard, we have to submit that during the course of the hearing, we were directed to furnish certain documents and certificates. The necessary documents, listed herein are being enclosed in compliance thereof.

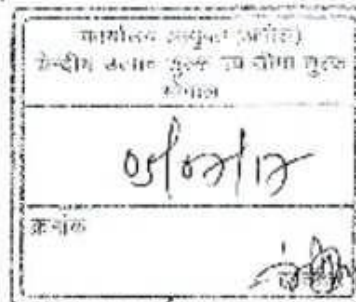
1. Certificate of Chartered Accountant regarding payment made for vehicle hire, covered under Reverse Charge Mechanism during the impugned period in dispute.
2. Copy of extract of bank statements from which the payment of service tax has been made, to establish that the payee bank and the challan issuing bank were different.

We request you to kindly place these documents along with the appeal memo and our written submission filed during the course of the hearing for the kind consideration of the Id. Commissioner (Appeals).

Thanks and regards,
For DB Corp Limited,


Sanjeev Mukherjee
Counsel

Place :Bhopal
Dated :05.07.2017



7. As appellant has filed the relevant documents for verification or examination by the learned Commissioner (Appeals) on 5.7.17 whereas the impugned order has been passed thereafter after 26 days which shows that the learned Commissioner (Appeals) did not bother to consider the documents filed by the appellant which is his duty and bound to do so. Therefore, the impugned order deserves no merits, hence, same is to be set aside.

8. There is demand of interest for the intervening period from the date of presentation of cheque till its realization. I find that as per Rule 6 (2A) of the Service Tax Rules, 1994, the date of presentation of cheque is the date of payment of Service tax. Same view has been taken by the Tribunal in the case of **Travel Inn India Pvt. Ltd.** (supra) wherein this Tribunal has observed as under:

9. With regard to the issue of payment of interest for delayed payments, we find that Rule 6(2A) of the Service Tax Rules, 1994 deals the situation, which is reproduced below:-

“Rule 6(2A) : ”For the purpose of this rule, if the assessee deposits the service tax by cheque, the date of presentation of cheque to the bank designated by the Central Board of Excise and Customs for this purpose shall be deemed to be the date on which service tax has been paid subject to realisation of that cheque.”

Admittedly, in this case, the appellant has paid the Service tax through cheque on due dates and the same stand realised on a later date. Therefore, the date of deposited the cheque into the treasury is the date of payment of Service tax as per Rule 6(2A) of the said Rules. In these circumstances, we hold that the appellant has paid the Service tax in time. Consequently, demand of interest on delayed payments is not sustainable.”

9. Therefore, I hold that date of presentation of cheque is the date of payment of service tax. In these circumstances, demand of interest is not sustainable against the appellant.

10. Further, I observe that as learned Commissioner (Appeals) has not taken into consideration the documents filed by the appellant, in that circumstances, the matter needs examination at the end of learned Commissioner (Appeals) to examine the documents. Therefore, the matter is remanded back to learned Commissioner (Appeals) to consider the documents filed by the appellant within 30 days from today and pass an appropriate the order in accordance with the law.

11. The appeal is disposed of in the above manner.

(dictated and pronounced in the open court)

(Ashok Jindal)
Member(Judicial)