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CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL REGIONAL BENCH AT HYDERABAD

Single Member Bench

Court – I

Service Tax Appeal No. 30412 of 2023

(Arising out of Order-in-Appeal No. HYD-SVTAX-SC-AP2-49-2023-24-ST dt.27.06.2023 passed by Commissioner of Central Tax & Customs (Appeals), Hyderabad)

M/s GopiChenna
H.No.11-1-1923, Armoor Road,
Armoor, Nizamabad, Telangana – 503 224 **.....Appellant**

VERSUS

Commissioner of Central Tax
Medchal - GST **.....Respondent**
H.No.11-4-649/B, Opp Mehdi Function Palace,
Above SBI Bazarghat Branch, Lakdikapool,
Hyderabad, Telangana – 500 004

and

Service Tax Appeal No. 30454 of 2023

(Arising out of Order-in-Appeal No. HYD-SVTAX-SC-AP2-110-22-23 dt.31.01.2023 passed by Commissioner of Central Tax (Appeals-II), Hyderabad)

M/s SIS Teleservices Pvt Ltd
4C Line, Plot No. 756, Gopal Nagar
Co-op Housing, Hydernagar, Hyderabad – 500 085 **.....Appellant**

VERSUS

Commissioner of Central Tax
Secunderabad - GST **.....Respondent**
GST Bhavan, Basheerbagh,
Hyderabad, Telangana – 500 004

Appearance

Shri R. Raghavendra Rao, Advocate for the Appellants.
Shri K. Srinivas Reddy & Shri V. Srikant Rao, ARs for the Respondents.

Coram:

HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER No. A/30078-30079/2024

Date of Hearing: 22.02.2024
Date of Decision: 26.02.2024

[Order per: P. ANJANI KUMAR]

These two appeals i.e., Appeal Nos. ST/30412/2023 & ST/30454/2023 are heard on the same day and have identical issue involved; both the cases are represented by the same Advocate. Therefore, both the Appeals are taken up for decision together.

2. Brief facts of the case in respect of Appeal ST/30412/2023 filed by M/s GopiChenna are that the Department has raised a demand on the basis of the income from sale of service shown in the Balance Sheet and the ITR Returns. The Appellants plead that there was a mistake in reflecting of cash deposits under the head 'Sale of service' and the same has been corrected by filing a revised ITR. A Show Cause Notice seeking service tax of Rs.5,47,402/- was confirmed by Original Authority vide OIO dt.16.12.2022 and was confirmed by Commissioner (Appeals) vide OIA dt.27.06.2023.

2.1 Brief facts as far as the Appeal ST/30454/2023 filed by M/s SIS Teleservices Pvt Ltd., are that there is a difference between statement 26AS and the ITRs/ST3 Returns filed by the Appellant. Accordingly, a Show Cause Notice dt.03.12.2020 seeking demand of service tax of Rs.14,33,413/- along with interest and penalty was issued to the Appellants and was confirmed by OIO dt.29.04.2022 and was upheld by the Commissioner (Appeals) vide OIA dt.31.01.2023. Hence these Appeals.

3. Shri R. Raghavendra Rao, learned Counsel appearing for the Appellants submits in respect of Appeal ST/30412/2023 filed by M/s GopiChenna that the Appellant is engaged in training interested candidates in the art of movie making, which is exempt by S.No.8 of Mega Exemption Notification No. 25/2012 dt.20.06.2012; though the Commissioner (Appeals) has given relief on account of exempted turnover for Rs.9,85,322/-, he confirmed demand on turnover of Rs.26,64,021/-; the Appellant submits that they have taken loans and cash deposits for personal use and the same were erroneously shown in the ITR; the lower authority passed the orders without considering the explanation.

3.1 Inasmuch as Appeal ST/30454/2023 filed by M/s SIS Teleservices Pvt Ltd., learned counsel submits that though the figure indicated in Income Tax Returns and ST3 Returns are tallying, the Department has raised demand on the basis of statement 26AS; the submission that the statement in 26AS include the payments received for the services rendered in the previous year were ignored by the Adjudicating Authority as well as the Appellate Authority.

4. Learned Counsel for the Appellants submits that demand of service tax cannot be fastened merely on the basis of ITR/26AS statements. He relies on the following cases:

1) Quest Engineers & Consultant Pvt Ltd Vs. C, CGST, Allahabad – 2022 (58) GSTL 345 (Tri-All)
2) Indian Machine Tools Manufacturers Association Vs. CCE, Panchkula [2023 (11) CENTAX 213 (9) (Tri-Chan)
3) Raj Mohan Vs C CGST, Panchkula – 2022 (8) TMI 832 (CESTAT-Chandigarh)
4) Umesh Tilak Yadav Vs. CCE [2024 (15) CENTAX 161 (Tri-Bom)]
5) Shree Kankeshwari Enterprises Vs. CCE, Bhavanagar [2023 (9) Centax 77 (Tri-Ahmd)]

5. Shri K. Srinivas Reddy, learned AR for Revenue in respect of Appeal ST/30412/2023 reiterates the findings of the Impugned Order and submits that the Appellants could not explain the cash deposits so claimed by them in spite of giving them a number of opportunities. No proof of acceptance of the revised ITR filed by them has also been given. Under the circumstances, the Adjudicating and the Appellate Authorities had no option but to confirm the demand raised.

5.1 Shri V. Srikant Rao, learned AR for Revenue in respect of Appeal ST/30454/2023 reiterates the findings of the Impugned Order and submits that the Appellants could not explain the stand taken by them regarding the amounts reflected in 26AS vis-a-vis, the service tax paid in the previous years and no proof was also submitted.

6. Heard both sides and perused the records of the cases.

7. On going through the records of the case, it is clear that the cases are made on the basis of third party data i.e., amounts reflected in Income Tax Returns and in Form 26AS. Revenue takes the stand that in the Negative List regime, Department is not obliged to prove the provision of a particular service to demand service tax and further, the Appellants could not explain that the difference satisfactorily. I find that this is not the correct approach; exigibility to service tax depends on the service provider, service rendered, service recipient and the consideration thereof. Unless these four elements have been connected logically, demand of service tax cannot be confirmed merely on the basis of figures reflected in other statutory records. Be it pre or post-Negative List

regime, the Department is under obligation to prove that the Appellants have rendered such and such service and to such and such persons and that the consideration was received towards the rendering of such service. Without doing the same, demand merely on the basis of figures does not survive.

8. I find that Tribunal has been continuously holding that such demands are not sustainable. I find that Chandigarh Bench of this Tribunal in the case of Indian Machine Tools Manufacturers Association Vs. CCE, Panchkula (supra) held as follows:

> *"11. Coming to third and final issue as to whether any demand can be sustained on the basis of difference between the figures of ST-3 Returns and the balance sheets, we find that it is a settled principle of law that service tax can be levied only when there is a clear identification of service provider, service recipient and consideration paid for the same. In the absence of any such evidence of the service recipient and the service provided, service tax cannot be demanded and confirmed. For this reason, we are of the considered opinion that it is not open for the Department to raise demands on the basis of other statutory returns like Income Tax Returns or balance sheets without proving that such service has been rendered by the assessee and consideration thereof has been received. Similarly, no service tax demand can be raised and confirmed on the basis of notional income. We find that Tribunal in the case of Synergy Audio Visual Workshop (P) Ltd. – 2008 (10) STR 578 (Tri-Bang.) held that:*
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> > *5.1 The other ground for confirming demands is that the appellants had shown certain amounts due from the parties in their Income-tax returns and Revenue has proceeded to demand service tax on this amount shown in the Balance Sheet. The appellants have relied on large number of judgments which has settled the issue that amounts shown in the Income-tax returns or Balance Sheet are not liable for service tax. In view of these judgments, the appellant succeeds on this ground also. The impugned order is set aside and the appeal is allowed."*

8.1 Also the Tribunal in the case of M/s Raj Mohan Vs. Commissioner of CGST, Panchkula (supra), held as follows:

> *"3. I have heard learned Counsel for the appellant and learned Authorised Representative for the Revenue and perused the case records including the written submissions and case laws filed by the respective sides. Learned Counsel for the appellant submits that on merits as well as on limitation no Service Tax can be demanded from the appellant. Per Contra, learned Authorised Representative re-iterated the submissions recorder in the impugned order and prays for dismissal of appeal filed by the appellant. So far as the issue about differences in the figures reflected in ST-3 Returns and in form 26AS is concerned it has been settled by way of various decisions of the Tribunal that the Revenue cannot raise the demand on the basis of merely differences without establishing that the entire amount received by the appellant as reflected in form 26AS is consideration for services provided because it is also not proper to presume that the entire differential amount was on account of consideration for providing services without verifying it. It is the specific case of the appellant that the amount shown in Form 26AS by the service recipient have not been received by the appellant. I also agree with the submission of learned Counsel that the burden to prove the allegations is upon the department that the appellants have received the extra payment on which the TDS of Rs.3,74,121/-(since form 26AS reflects*

TDS) has been deducted by the service recipient. My aforesaid view is also supported by the decision of the Tribunal in the matter of Qwest Engineering Consultant Pvt. Ltd. v/s Commissioner CGST, Central Ex. Allahabad; 2022 (58) GSTL-345 (Tri-All.)in which the co-ordinate Bench of the Tribunal has held that form 26AS is not a statutory document for determining the taxable turnover under the Service Tax as form 26AS is maintained on cash/receipt basis by the Income Tax department for the purpose of TDS etc. whereas the Service Tax is chargeable on mercantile basis (approval basis) on the services provided. Similarly, in the matter of Kush Construction v/s CGST Nachin, ZTI, Kanpur;2019 (24) GSTL-606 (Tri-All.) also it has been held that differences in figures reflected in ST-3 Returns and form 26AS cannot be basis for raising Service Tax demand without examining the reasons for such differences and without examining whether the amount as reflected in the said Income Tax Return was the consideration for providing any taxable services or the difference was due to any exemption or any abatement. Even otherwise in various decisions of the Tribunal it has been held that the figures in form 26AS are already included in Income Tax Returns in the Profit & Loss account and balance sheet which is a public document and the ST-3 Returns were also filed by the appellants regularly therefore, no suppression can be alleged and no evidence has been adduced by the Revenue to establish melafide intention for evasion of Service Tax and therefore extended period cannot be invoked. The recent decision of the Tribunal on this issue of extended period in such type of cases is by the Kolkata Bench of the Tribunal vide order dated 23/02/2022 in the matter of Service Tax Appeal No. 75792 of 2021 titled as M/s. Luit Developers Pvt. Ltd. v/s. Commissioner CGST & Central Excise, Dibrugarh. So far as the demand of Rs. 38,357/- based on four invoices is concerned, I am unable to find any document in the case records in support of appellant. The appellant has failed to adduce any evidence/document in support of their claim that the said amount has not been received by them or that the invoices/bills were cancelled. Rather it has been submitted by the learned Counsel that the appellant has made a submission before the lower authorities that they were ready to pay the service tax amount involved on the said invoices in order to avoid the interest liability and in the written submission herein it has been mentioned by the appellant that the service tax has been deposited by them. Therefore accordingly this issue is decided against the appellant."

9. In view of the above, I find that the Impugned Orders cannot be legally sustained; Accordingly, I set aside the Impugned Orders and allow the Appeals, with consequential relief, if any, as per law.

(Pronounced in open court on 26.02.2024)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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