

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH – COURT NO. 3

SERVICE TAX APPEAL NO. 54911 OF 2023

(Arising out of Order in Original No. RPR/EXCUS/000/COM (Audit)/2/2023 dated 11.01.2023 passed by Commissioner of Central Goods, Service tax and Central Excise, Raipur)

M/s. South Eastern Coalfields Limited
O/o the General Manager, Hasdeo Area,
Manendragarh (C.G)

...Appellant

Versus

**Commissioner of Central Excise
& Service Tax, Raipur**
C.R. Building, Dhamtari Road, Tikrapara
Raipur, Chattisgarh-492001

....Respondent

APPEARANCE:

Shri Rajeev Agarwal, Advocate for the appellant
Mr. Arun Sheoran, Authorized Representative for the Respondent

Coram:

HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

DATE OF HEARING: 14.12.2023

DATE OF DECISION: 29.02.2024

FINAL ORDER NO. 54520/2024

HEMAMBIKA R. PRIYA

The present appeal has been filed by the appellant against the Order in Original No. RPR/EXCUS/000/COM (Audit)/2/2023 dated 11.01.2023 passed by Commissioner of Central Goods, Service tax and Central Excise, Raipur.

2. The brief facts of the case are that in the course of an audit by the Audit Commissionerate, Raipur, the figures of ST-3 Returns filed during the period April 2015 to June 2017 was compared with some specific ledger account balances appearing in the Trial Balance for the period April 2015 to June 2017.

2.1 Based on such comparative figures as appearing in the Trial Balance and ST-3 returns, the Revenue authorities held that the difference in the two set of figures represent the value of taxable services on which due service tax has not been paid. A demand of Rs. 11,36,80,999/- was proposed in the Show Cause Notice dated 29.12.2020. In the course of the adjudication proceedings, the appellant submitted the reconciliation statement and pleaded that the demand has been proposed without examination of the nature of the entries appearing in the Ledger accounts by deeming all the entries appearing to be against taxable services rendered. The Adjudicating Authority remanded the matter for further verification to the Range Office and thereafter confirmed the demand of Rs. 8,92,567/- plus applicable interest and equivalent penalty under Section 78 of the Finance Act 1994.

3. Learned Counsel appearing on behalf of the appellant submitted that the demand proposed in Show cause notice solely on figures as appearing in Trial Balance and ST-3 returns is not sustainable. The entire demand proposed in the SCN is based solely on the difference in values as appearing in the books of accounts and the corresponding figures as reported in ST-3 Returns for the period in dispute, without even examining the nature of the entries in the alleged ledger accounts and without examining whether such amounts are for "taxable services" received /rendered. In such a case, the burden of proof lies on the Revenue as the allegations of short payment/non-payment of service tax has been made on the appellant, based purely on the differential figures and alleging the same to be income against "taxable services".

3.1 He further submitted that the difference in the figures as reported in the Ledger Accounts and those as appearing in the ST-3 returns are inherent, and was well within the knowledge of the Department, as for the period, prior to the period in dispute, no demand was ever raised on such differential figures. In this connection, he relied upon the following judgements:-

- **Go Bindas Entertainment Pvt. Ltd. Vs. Commissioner of S.T., Noida, 2019 (27) GSTL 397 (Tri-All.),**
- **M/s Kush Constructions vs. CGST Nachin, ZTI, Kanpur, 2019-TIOL-1757-CESTAT-ALL**

3.2 On invocation of Rule 6(4A) of the Service Tax Rules for Financial Year 2015- 16, the Learned Counsel highlighted that as per the impugned OIO dated 11.01.2023, the value liable to tax under the service heads "Legal Services" is Rs. 7,83,172/-, "Security Services" is Rs. 3,87,206 whereas under the service head "Works Contract" the appellant has shown excess taxable value to the extent of Rs. 1,08,02, 670/-. He further submitted that the Adjudicating Authority has held that the excess service tax paid in a particular year can be adjusted within the same year by placing reliance on Rule 6(4A) of the Service Tax Rules. In this connection, he submitted that even after noting that excess service tax paid could be adjusted during the year, the Adjudicating Authority had not allowed the adjustment of such excess service tax paid by the appellant on the "Works Contract" Service, against the demand of short payment of service tax paid under the "Legal Service" and "Security Service". He contended that the demand of Rs. 1,13, 560/- under Legal Services and demand of Rs. 56,145/- confirmed under Security Service aggregating to Rs. 1,69,795/- was clearly adjustable against the

excess service tax paid on Works Contract Service during the FY 2015-16 under Rule 6(4A) of the Service Tax Rules.

3.3 The learned Counsel further submitted that extended period was not invocable for the demand confirmed for the Financial Year 2016-17 and upto June 2017 on principle of Revenue Neutrality, in view of the fact that the entire confirmed demand for the entire period in dispute (except for the demand of Rs. 13/-under Rent-a-Cab service) was under Reverse Charge Mechanism, on which the appellant was entitled to avail Cenvat Credit. He relied on the decision of the Tribunal in the case of Asmitha Microfin Ltd v Commr. Of Cus., C. Ex & ST, Hyderabad-III, [2020 (33) GSTL 250 (Tri- Hyd)] wherein the Hon'ble Bench after placing reliance on the judgment of the Hon'ble Apex Court in Jet Airways (India) Ltd. v. Commissioner [2017 (7) G.S.T.L. J35 (S.C.)] held that:-

"However, we find that the demand is for the period April, 2009 to March, 2012 and the show cause notice was issued invoking extended period of limitation on 17-10-2014. The entire demand is under reverse charge mechanism and if the appellant had paid the service tax under reverse charge mechanism, they would have been entitled to Cenvat credit of exactly the same amounts. Therefore, the revenue neutrality in this case is evident. It has been well settled at the hands of the Apex Court in the case of Jet Airways (supra) that extended period of limitation cannot be invoked in revenue neutral cases. Therefore, the entire demand is hit by limitation and therefore needs to be set aside. The impugned order is set aside and the appeal is allowed"

Thus, the learned Counsel submitted that as the entire demand proposed in the SCN dated 29.12.2020 fell within the extended period of limitation, in view of the decisions mentioned supra, the same is liable to be set aside.

3.4 The learned Counsel also submitted that invocation of extended period of limitation and penalty under Section 78 of the Finance Act 1994 is bad in law, as the entire demand proposed on differential figures of Ledger Accounts as appearing in the Trial Balance and as reported in ST-3 without even specifying the reasons as to how such differential figure represents the "taxable services" on which due service tax, as alleged, has not been paid. On such vague computation, the non-disclosure of such differential figures in ST-3 returns filed has been alleged as suppression of facts. Further, no positive evidence of suppression of facts coupled with intention to evade the payment of service tax is discernible from the show cause notice. For these submissions, he relied upon the following judgements:-

- **M/s Vandana Global vs. Commissioner (Appeals) CGST, Central Excise & Customs, Raipur in Excise Appeal NO. 53026 OF 2018 (Final Order NO. 51135 of 2022 dated 02.12.2022)**
- **Uniworth Textiles Ltd. vs. Commissioner of central Excise, Raipur 2013 (288) ELT 161 (SC)**

3.5 On the issue of penalty under Section 78, Learned Counsel submits that it is a matter of settled position of law that there is a presumption that PSUs do not have any intention to evade the payment of tax as held by the Hon'ble Tribunal in the case of **Burn Standard Co. Ltd Vs CCE [2007(216) ELT 77 (Tri)]** and earlier upheld by the Hon'ble Supreme Court in the case of **Commissioner of Central Excise, Chennai-I Vs. Chennai Petroleum Corpn. Limited [2007 (211) ELT 193 (SC)]**.

4. The learned Authorised Representative reiterated the findings of the adjudicating authority. He submitted that it was during audit that the difference between the ST-3 returns and the Trial Balance figures were noted, on which service tax was payable. In addition, he added that the appellant had not declared the higher figures to the Department in view to evade the taxes. Hence, extended period of limitation was invokable. Further, he submitted that in the era of self-assessment, the responsibility cast on the appellant to assess his duty liability correctly and reflecting the same in their ST-3 returns. Had audit not been conducted, this higher liability would not have been discovered. Therefore, the extended period had been correctly invoked. He prayed that the appeal may be set aside.

5. I have heard the Ld Counsel for the appellant and the Ld. Authorised Representative for the Department. The issue before me is whether the difference in the figures found in the Trial Balance as compared to the figures declared in the ST-3 returns amounts to prima-facie short payment of service tax, and whether the invocation of extended period of limitation and imposition of penalties is correct. I find that in the impugned order the adjudicating authority has held as follows;

“21. On perusal of the reconciliation statements, duly certified by the chartered accountant, and other relevant documents submitted by the notice it, I find that there are certain variations, year -wise and service -wise, between the figures of transaction value as per Trial Balance (after abatement as applicable for the relevant services) and the transaction value as per ST - 3

returns (after abatement as applicable for relevant services). I find that in some cases, the transaction values arrived at as per trial balance are on the higher side as compared to transaction values shown in corresponding ST -3 returns to the extent as mentioned in the reconciliation statements. These differences between the two figures are not supported with any reason/explanations. Evidently, the notice a have failed to provide any explanation of the said differences, but still persists following the process of reconciliation, as discussed above. Further, I find that in remaining cases the transaction values arrived at as per trial balance are less than the transaction values shown in corresponding ST -3 returns, which has resulted in excess payment of tax. In this context, it would be expedient to go through the provisions of rule 6(4A) of the service tax rules, 1994,

21.1. From the above provisions, it is clear that any amount of service tax paid in excess in a month or quarter to be adjusted in the succeeding month or quarter within the same year only. In the instant case, as per the reconciliation statements, the excess payment of taxes discussed above are related to a year, whereas the short payment tax are related to different year. As such, the excess payment of tax cannot be adjusted against the short payment of tax in terms of provisions of rule 6(4A) of the service tax rules, 1994. Accordingly, I arrive at the conclusion that where the transaction values arrived at as per Trial Balance are on higher side as compared to the transaction values shown in the corresponding ST -3 returns, the Noticee is liable to pay the

due service tax. Short payment of service tax, accordingly works out as under.....”.

6. I address the first issue as to whether any demand can be sustained on the basis of the difference between the figures of ST-3 returns and the Trail Balance, I find that it is a settled principle of law that service tax can be levied only when there is clear identification of a 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, I am of the considered opinion that it is not open for the Department to raise demands on the basis of other statutory returns or balance sheets without proving that such service has been rendered by the appellant and consideration thereof has been received. I find that the Tribunal in the case of Synergy Audio Visual Workshop (P) Ltd., vs Commissioner [2008(10) STR 578(Tri.Bang)] held as follows:

“5.1 The other ground is for confirming demands is that the appellant 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 a large number of judgements which is settled the issue that amount shown in income tax returns or balance sheet are not liable for service tax...”

6.1 I find that the Tribunal in a catena of decisions has held that it is well settled law that no demand can be confirmed by comparing the ST -3 returns with balance sheet figures, in the absence of any

evidence to the contrary that income in the balance sheet, if excess, reflects the provision of taxable service. As it is the Revenue authorities who have made the allegations of non payment of tax, and as such, the onus to prove the said allegation lies with them to substantiate the allegations. In *Kush Constructions vs CGST, Kanpur* [2019(24)GSTL 606(Tri. All.)] it was held as under:

“1. We note that without further examining the reasons for the difference in two, revenue has raised the demand on the basis of difference between the two. We note that revenue cannot raise the demand on the basis of such difference without examining the reasons for the said difference and without establishing that the entire amount received by the appellant as reflected in the said returns in the Form 26AS being consideration for services provided and without examining whether the difference was because of any exemption or abatement, since it is not legal to presume that the entire differential amount was on account of consideration for providing services. We, therefore, do not find the said show cause notice to be sustainable. In view of the same is set aside the impugned order and allow the appeal.”

6.1.1 In the case of *Principal Commissioner, CGST vs. SBI Life Insurance Company Limited* (2024 TIOL 202 CESTAT Mumbai), the Tribunal held that demand/penalty on the basis of difference between ST-3 Returns and Income tax returns of any period, without further examination to establish that the difference is on account consideration received towards discharge of services, cannot be sustained.

6.2 Following the above decisions, I hold that mere difference in figures appearing in the trial balance as compared to the ST -3 returns without any corroborative evidence that taxable services had indeed been provided by the appellant cannot be upheld.

6.3 Further, it is a fact on record that the appellant was filing his ST-3 returns regularly. The Department did not raise any query or seek any clarification from the appellant. Thereafter, merely on the basis of audit observation as per the figures of Trial Balance, the Revenue, cannot, at this stage allege suppression.

7. Accordingly, the impugned order cannot be sustained and is set aside. Consequently, the Appeal is allowed.

[Pronounced in the open Court on 29.02.2024]

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

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