

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

PRINCIPAL BENCH - COURT NO. II

Service Tax Appeal No. 50284 of 2022-SM

(Arising out of order-in-appeal No. BHO-EXCUS-001-APP-088-21-22 dated 11/12.08.2021 passed by the Commissioner (Appeals), Central Goods & Service Tax and Central Excise, Bhopal (M.P.).

Mohan Kumar Tiwari

M/s Deeksha Engineering
304, Narsingarh, Patheria
Damoh (M.P.)-470675.

Appellant

VERSUS

Commissioner

Central Goods & Service Tax

GST Bhawan, Mission Chowk
Napier Town, Jabalpur-482001

Respondent

APPEARANCE:

Sh. Uttam Kumar Nag, Consultant for the appellant
Sh. Mahesh Bhardwaj, Authorised Representative for the respondent

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO. 50675/2022

DATE OF HEARING/DECISION: 28.07.2022

ANIL CHOUDHARY:

Heard the parties.

2. The only issue involved in this appeal is whether show cause notice has rightly been issued for difference in turnover as per the ST-3 return filed by the appellant and the amount reflected as per the Form 26AS (under Income Tax provision) for the period 2013-14 and 2014-15.

3. Brief facts of the case are that show cause notice dated 22.10.2018 was issued as it appeared to Revenue that the turnover of the appellant as per Form 26AS is higher than the turnover as per the ST returns and the financial records maintained by the appellant. Service Tax appeared to be short paid, duty of Rs. 12,58,560/- was demanded with proposal to impose penalty under Section 78, 77 and under Section 70 of the Act. Vide the ex-parte order-in-original the show cause notice was adjudicated and the proposed demand was confirmed alongwith equal amount of penalty under Section 78, penalty was also imposed under Section 77(1)(c) and Section 70 read with Rule 7 of Service Tax Rules.

4. Being aggrieved, the appellant preferred appeal before the Commissioner (Appeals) who recorded the finding that the actual excess turnover as per Form 26AS for the two financial years 2013-14 and 2014-15 is Rs.7,22,058/- (Rs.1,28,56,614/- - Rs.1,21,34,556/-). Thus, the short paid tax amount is Rs. 89,246/-. Accordingly, this amount was confirmed with equal penalty under Section 78 of the Act, and penalty imposed under Section 70 for late filing of return, was reduced to Rs.500/- for the period October, 2013 to March, 2014. Penalty amounting to Rs. 10,000/- imposed on the appellant under Section 77(1)(c) was upheld. Being aggrieved, the appellant is before this Tribunal.

5. Learned Counsel for the appellant explains that actually there is no service tax short paid. So far the bills for the month of March, 2015 are concerned, as reflected in Annexure-'R' in the appeal paper book, whereas six bills in March, the total amount being

Rs.6,98,951/- have been booked as taxable turnover for the financial year 2015-16 and service tax has been deposited in the month of July, 2015. Accordingly, there is no case of service tax short paid and the differential amount of Rs.23,107/-, which is due to receipt of payment on cum tax benefit, whereas the Commissioner (Appeals) has not given the benefit of cum tax, resulting into this amount. He further urged that the appellant service provider is entitled to cum tax benefit. As the appellant is an individual service provider and the recipient is a limited company namely Heidelberg Cement India Limited, service tax is payable on 25% on bill amount. Accordingly, he prayed that there is no case of short payment of service tax.

6. Sh. Mahesh Bhardwaj, learned Authorised Representative appearing for the Revenue relies on the impugned order.

7. Having considered the rival contentions, I find that there is no case of short payment of service tax as the appellant has paid the service tax in the next financial year. Accordingly, the demand and penalty under Section 78 is set aside. In the facts and circumstances of the case, penalty under Section 77(1)(c) as well as under Section 70 is also set aside.

8. In the result, the appeal is allowed.

(Dictated and pronounced in open Court).

(Anil Choudhary)
Member (Judicial)