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IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction [Central Excise]

ORIGINAL SIDE

CEXA/19/2023
IA NO.GA/1/2023
M/S. RADIANT SECURITY

-Versus-

THE COMMISSIONER OF CGST & EXCISE, KOLKATA NORTH COMMISSIONERATE

BEFORE :
THE HON'BLE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE SUPRATIM BHATTACHARYA
Date : 5th January, 2024

Appearance :
Mr. Nirmal Kumar Mukhopadhyay, Adv.
Mr. Nilotpal Chowdhury, Adv.
Mr.Deepak Sharma, Adv.
...for the appellant.

Mr. K.K. Maity, Adv.
Mr.Tapan Bhanja, Adv.
...for the respondent.

The Court : This appeal filed by the assessee under Section 35G of the Central Excise Act, 1944 as made applicable to the Service Tax under Section 83 of the Finance Act, 1994 is directed against the final order dated 26.6.2023 in Final Order No.75911/2023 passed by the Customs, Excise & Service Tax Appellate Tribunal, Kolkata.

The assessee has raised the following substantial questions of law for consideration :

"i) Whether the difference of figures between balance sheet and ST-3 return can be made on the basis of demand maintainable in law since balance

sheet figure is based on bills received and ST-3 return figure is based on the payment received?

ii) Whether the Ld. Tribunal made an error in not remanding the matter to the authorities below for verification of the challans submitted by the appellant which was admitted by the Adjudicating Authority?

iii) Whether the demand is barred by limitation and the Ld. Tribunal made an error without adverting anything on the point of limitation?

iv) Whether the Ld. Tribunal is justifying in confirming the demand and imposing penalty even after admitting that the appellant/petitioner had claimed the excess payment of service tax and evidence was produced before the Adjudicating Authority?

v) Whether the Order passed by the Ld. Tribunal is perverse for not considering the relevant fact of production of documents and relied on the inference of possibility of the payment challans having connected with other units at Bhubaneswar?

vi) Whether the Ld. Tribunal erred in law in dismissing the appeal of the appellant herein even without coming to a specific finding on the documents as produced before the adjudicating authority that such documents never existed and on the pretext of difficulty of the jurisdictional Commissionerates' inability to verify the claim of the appellant, the demand cannot be justified and hence, the impugned order dated 26.06.2023 is perverse and bias?

vii) Whether the Order passed by the Ld. Tribunal is also otherwise bad in law in facts?"

We heard Mr. Nirmal Kumar Mukhopodhyay, learned counsel for the assessee and Mr. K.K. Maity, learned counsel for the respondent.

After we have heard the learned counsel for the parties, we find that the assessee is aggrieved by the concurring findings of fact recorded by three authorities, namely, the adjudicating authority, the first appellate authority and the learned tribunal. The learned tribunal after hearing the entire facts has quoted as hereunder :

> *"5. Admittedly, the Department has acceded to the request of the appellant and has arrived at the net Service Tax payable by the Kolkata Unit. The appellants were claiming that they have submitted several challans which were not reflected in the ST-3 Returns, but could not produce copies of such challans. On enquiry, even before the Tribunal, no such copies of the challans could be produced. It is not possible to take a view that they have themselves did not account for such several challans during the period of more than three years and did not reflect the same in the ST-3 Returns till the issue was pointed out by the Service Tax Audit Team. In the normal course, no assessee would miss out the Service Tax paid by way of GAR Challans to properly show the same in the ST-3 Returns. Such challans also would form part of their expenditure amount. Therefore, it is not clear as to how the appellant has himself not accounted for these challans during the period of three years. Further as the appellant has unit at Bhabaneswar, there may be possibility these challans have been used for Service Tax to be paid by that Unit. Unless, the entire transaction of Kolkata Unit vis-a-vis their Bhubaneswar Unit is undertaken, the fact of challans not accounted, cannot be examined. Since the issue pertains to 2007-08 to 2009-10, at this stage, it would not possible for two Jurisdictional authorities to undertake this huge work to verify the appellant's clam. Therefore, as the appellant is not in a position to bring any proper clear evidence*

towards his explanation, I deem it to fit dismiss their appeal".

In this appeal filed by the assessee under Section 35G of the Central Excise Act, 1944 the Court is required as to whether any substantial question of law arises for consideration. The matter before us is entirely factual and the adjudicating authority, the first appellate authority and the learned tribunal have appreciated and re-appreciated the factual position and rejected the contentions raised by the appellant. In fact, the learned tribunal has granted a partial relief to the appellant by reducing the penalty to 25%. Thus, we find no question of law much less substantial question of law is arising for consideration.

In the result, the appeal fails and the same is dismissed.

The connected application [GA/1/2023] stands closed.

(T.S. SIVAGNANAM)
(CHIEF JUSTICE)

(SUPRATIM BHATTACHARYA, J.)

S.Das/