ORDER OD-4

CEXA/5/2023
IA NO:GA/1/2023

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (CENTRAL EXCISE)
ORIGINAL SIDE

KAPILESHWAR JHA
VS.
ASSISTANT COMMISSIONER, SERVICE TAX DIVISION,
DURGAPUR COMMISSIONERATE AND ORS.

BEFORE:
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ
AND
THE HON'BLE JUSTICE UDAY KUMAR
Date : 18th November, 2025.

Appearance:
Mr. Sumit Ghosh, Adv.
Mr. Anupam Kumar Dey, Adv.
Mr. Bhaskar Sengupta, Adv.
Mr. Souradeep Majumdar, Adv.
… for Appellant

Mr. Vipul Kundalia, Sr. Adv.
Mr. Tapan Bhanja, Adv.
Ms. Anushka Mandal, Adv.
Mr. Anindya Kanan, Adv.
…for Respondents

The Court: Learned counsel appearing for the appellant submits that a summon was issued under Section 14 of the Central Excise Act, 1944 (hereinafter referred to as the "Excise Act"), as made applicable to service tax through Section 83 of the Finance Act, as amended, seeking appearance and production of certain relevant documents such as work orders, balance sheet, bank statement etc., in respect of the period from 2008-09 to 2012-13, before the Superintendent of Central Excise and Service Tax. Accordingly, the appellant appeared and produced the said relevant documents. On examination, two allegations were raised. The first was that the appellant had failed to obtain service tax registration, despite crossing the threshold limit in 2008-09. The second allegation pertained to a discrepancy in the value of gross receipts as reflected in the balance sheet vis-à-vis the bank statements and the service tax returns (ST-3) (wherein the higher value of the three was taken), has been noticed. Consequently, the appellant was called for interrogation. In response, the appellant appeared and explained all anomalies, revealing that due to lack of knowledge, the appellant had remained unregistered only for one year i.e., during 2008-09, though the corresponding tax liability had been admitted. As such, no dispute remains at present, in this regard. It was further explained that the bank statements reflected deposits on account of earnest money, security deposits, service charge refunds/credits etc., and that the ST-3 returns included abatements claimed during the relevant period. However, no substantiating documents were produced. On conclusion of the proceedings, a service tax liability was determined at Rs.27,12,719/- (including applicable cess). Out of the said liability, a sum of Rs.5,43,498/- (including applicable cess) has already been paid and the balance amount of Rs.21,69,221/- was proposed to be demanded vide a Show Cause-cum-Demand Notice (SCN) dated 22.10.2013. The said SCN was followed by the Order-in-Original dated 31.03.2017, wherein it was stated that the exemptions and abatements, as claimed for, in the instant case, were not applicable. Accordingly, the proposed demand of service tax (including Cess) as per SCN, was confirmed. Thus, a demand of service tax amounting to Rs.21,69,221/- along with a penalty of Rs. 10,000/- for violation of Section 69, a late fee of Rs.4,000/-for violation of Section 70 (read with Rule 7C of Service Tax Rules, 1994) and a penalty equivalent to the said tax amount of Rs.21,69,221/ under Section 78, all under the Finance Act, 1994, totaling to Rs.43,52,442/-, was raised.

Being aggrieved, an appeal was preferred before the Commissioner of CGST & Central Excise, Siliguri Appeals Commissionerate, the respondent No.2 herein, who rejected the appeal solely on the ground of non-payment of 7.5% pre-deposit amounting to Rs. 1,62,692/-. The appellant thereafter preferred an appeal before the Customs, Excise and Service Tax Appellate Tribunal (CESTAT), Kolkata. However, due to the negligence of the learned Advocate for the appellant, the appeal got dismissed inasmuch as the miscellaneous application for condonation of delay was also dismissed.

Learned counsel appearing for the appellant prays for a direction upon the Commissioner of CGST & Central Excise, Siliguri Appeals to rehear the matter afresh, as the appellant/assessee has since deposited the amount of Rs.1,62,692/- towards the mandatory 7.5% of pre-deposit required for hearing of an appeal.

Considering the above fact and the submission made by the appellant, let the order of the Commissioner of Appeals which has now been merged with the order or decision arrived at by the Tribunal on 24.8.2022, be set aside and the matter be remanded back to the Commissioner of Appeals for fresh hearing within a period of three months from date. The appellant is also requested to serve a copy of this order upon the Commissioner of Appeals

CEXA/5/2023 along with IA NO:GA/1/2023 is disposed of.

(RAJARSHI BHARADWAJ, J.)

(UDAY KUMAR, J.)

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