

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA**

REGIONAL BENCH - COURT NO.1

Service Tax Appeal No.75856 of 2021

(Arising out of Order-in-Appeal No.57/Pat/s.Tax/Appeal/20121-22 dated 11.08.2021 passed by Commissioner(Appeals), Customs, Central GST & Central Excise, Patna.)

M/s. Piyush Sharma

(Panchanan Sharma, Dheourani Tola, Mokama, Patna-803302.)

...Appellant

VERSUS

Commissioner of CGST & CX, Patna-I

(C.R. Building (Annexe), Bir Chand Patel Path, Patna.)

.....Respondent

APPEARANCE

Shri N.K.Chowdhury, Advocate for the Appellant (s)

Shri S.Mukhopadhyay, Authorized Representative for the Revenue

**CORAM: HON'BLE SHRI ASHOK JINDAL, MEMBER(JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER(TECHNICAL)**

FINAL ORDER NO. 77332/2023

DATE OF HEARING : 20 September 2023

DATE OF DECISION : 17, Oct. 2023

Per : ASHOK JINDAL :

The appellant is in appeal against the impugned order for demanding service tax from the appellant for the period 2012-13 to 2016-17 by issuance of the show cause notice dated 23.04.2018.

2. The facts of the case are that the appellant has undertaken and/or rendered services to telecommunication companies viz. Tata Teleservices Ltd., ATC Telecom Pvt.Ltd., ATC Infrastructure Services Pvt.Ltd. and Idea Cellular Infrastructure Ltd. in relation to erection, commissioning and installation, completion fitting-out, repair, maintenance services to telecommunication towers of those companies, which also includes execution of Civil Construction Work. On the basis

of the information received from the Income Tax Department in the form of Form-26AS, it was found that the appellant has received an amount of Rs.1,19,67,288/- during the period from 2012-13 to 2016-17 on which TDS is deducted by the service recipient, therefore, show cause notice was issued to the appellant for demanding service tax from the appellant. Thereafter, another demand was raised on 11.02.2020 for the period April 2017 to June 2017 on the basis of Best Judgement Method. The appellant contested the show cause notice, but the demand proposed in the show cause notice was confirmed against the appellant. Against the said order, the appellant is before us.

3. The Ld.Counsel appearing on behalf of the appellant submits that on the basis of Form-26AS figure, the demand cannot be raised against the appellant.

4. It is further submitted that the appellant received contractual payments on execution of 'Works Contract Services' and the appellant has submitted the copies of work orders, payment particulars, copies of the invoices and Form-26AS. The work order shows that they he executed composite work. The payments were made to the appellant from the service recipient after deducting Works Contract Tax in lieu of Local Sales Tax/VAT. It is also submitted that valuation should have been made in terms of Rule 2A(ii) of the Valuation Rules, 2006 after allowing abatement. It is also submitted that appellant is eligible for the benefit of Notification No.30/2012-ST dated 20.06.2012 being the appellant is a Proprietorship Firm and tax liability has not been calculated on the basis of Rules and Notifications. The mandatory pre-show cause notice consultation was not held. Therefore, it is a violation of principles of natural of justice and adoption of Best Judgement Method for the year 2017-18 is totally arbitrary and contrary to the documents. It is the submission that during the period from April 2017 to June 2017, the receipt amount was only Rs.3,00,904/- and after applying the Valuation Rules and computation under Notification No.30/2012-ST dated 20.06.2012, the liability would come to only

Rs.22,568/- in place of Rs.7,41,383/- which has been calculated hypothetically.

5. It is also submitted that the demand is barred by limitation as for the period 2012-13 to 2016-17, the show cause notice has been issued on 23.04.2018, which is beyond the normal period of limitation. The appellant was submitting the returns and paying service tax. Therefore, the differential demand is hypothetically demanded and is contrary to the statutory provisions.

6. It is further submitted that the issue relates to interpretation of the provisions of the Finance Act, Valuation Rules and Notification No.30/2012-ST dated 20.06.2012, therefore, extended period of limitation is not invocable. It is also submitted that some part of the demand is beyond five years.

7. He also submitted that the impugned order is an ex parte order. On that ground also, the impugned order is to be set aside. In view of these, it is his submission that the impugned order, is to be set aside.

8. On the other hand, the Ld.AR for the Department reiterated the findings of the impugned order and submitted that the appellant did not co-operate during the investigation, therefore, the demand has been rightly calculated on the basis of Form-26AS.

9. Heard the parties, considered the submissions.

10. In this case, the appellant has contended that the demand has been raised on the basis of Form-26AS supplied by the Income Tax department. Although summons were issued to the appellant and the appellant did not join the proceedings, therefore, the demand has been raised on the basis of Form-26AS. Admittedly, no investigation has been conducted in this case at the end of the appellant by the adjudicating authority. Being the appellant a registered service provider and filing their Service Tax returns, in that circumstances, the demand cannot be raised on the basis of Form-26AS obtained from the Income Tax Department. Further, the adjudication order has been passed ex parte.

11. Moreover, the show cause notice has been issued to the appellant by invoking extended period of limitation and some of the demand pertains to beyond five years and in this case, the demand has to be calculated in terms of Valuation Rules, 2006. The issue in this case is whether the appellant is eligible for the benefit of Notification No.30/2012-ST dated 20.06.2012 or not?

12. In that circumstances, we hold that extended period of limitation is not invocable. Moreover, on the basis of Form-26AS, no demand is sustainable against the appellant.

13. In that circumstances, we set aside the impugned order and allow the appeal with consequential relief, if any.

(Order pronounced in the open court on 17.10.2023.)

Sd/
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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