

= ORDER IN APPEAL =

M/s Shri Shakti Finance, Near Doctor House, Dap Milan House, Saranagar-201002 (hereinafter referred to as 'the appellant') has filed the present appeal against Order-in-Original No.19/Demand/2011-12 dated 30.01.2017 (hereinafter referred to as the impugned order) passed by the Assistant Commissioner, Central Excise, Division Surindranagar (hereinafter referred to as the assessing authority) in their own case.

2. Briefly stated the facts of the case are that the appellant was providing services under the category of 'Rent a cab' Services and 'Recovery Agent Services' during the period 2010-11 to 2013-14. However they obtained the service tax registration on 21.09.2012. On being asked by the Jurisdictional Range Superintendent, appellant provided various documents i.e. Copy of Balance Sheet, profit and Loss account, Form 26AS and Credit Memo. In respect of service provided by them. On scrutiny of said documents, revenue observed that the Appellant is providing these services during the period 2011-12 to 2013-14 and paying service tax from October 2013 and onwards. The appellant crossed basic threshold exemption limit of Rs. 10 lakhs on 01/10/2011, accordingly service tax liability was worked out as under-

Period F.Y.	Total value of Service	Taxable value	Assessable value (Rs.)	Rate of Service Tax	Service Tax Payable (Rs.)
2010-11	895003	-N/L- (Exempted)	NIL	NA	NA
2011-12	1997042	697042- (being first value of exemption limit of 10 lakh)	1300000	10.14%	131802
2012-13	2220015	2220015	1427410	12.58%	2,25,068/-
2013-14	1430791	1430791	1400761	12.58%	1,73,738/-
Total		4525443	4004871	Total	4,79,028/-

3. In response to the inquiry initiated by the Jurisdictional Range Superintendent, the Appellant intimated that they have deposited the total service tax amount of Rs. 2,72,787/- along with interest amount of Rs. 1,35,559/- (Total Rs. 4,79,028/-) vide cheques No. 89802193030201532257 (Rs. 2,72,545/-) and 858021930302015312216 (Rs. 1,04,197/-) towards their service tax liability and interest for the year 2011-12 and 2012-13. They also reported the payment of Rs. 1,49,854/- for the period Oct' 13 to March 14ir Ueir as't yearly ST-3 return. Since there was short payment of the service tax amount of 88,283/- towards liability for the year 2011-12 to 2013-14 against the Appellant as per the detail given under, this led to issuance of demand SCN.

(Signature)

Period F.Y.	S. Tax Payable	S. Tax Paid	S. Tax short paid	Interest Payable on already paid S. Tax on 30.06.15	Total Interest Paid. (Rs.)
2011-12	190181	44288	15132	21691	
2012-13	275809	270680	0	23503	
upto (2011-12 to 12-13)	305690	270727	15132	132229	135996
2013-14	170139	119354	23234	----	
Grand Total	475829	420021	58598	132229	

4. The lower adjudicating authority vide above mentioned impugned order confirmed the demand of Service Tax Rs. 5,28,713/- . Since appellant already paid the service tax of Rs. 2,40,417/-, therefore ordered to recover the remaining amount of Rs. 55,648/- . It also confirmed interest at appropriate rate. Since appellant already paid interest of Rs. 1,01,688/-, therefore ordered to appropriate the same against the rate interest payable. The lower adjudicating authority also confirmed penalty of Rs. 10,000/- under Section 77 of the Finance Act, 1994, actually of Rs. 1,28,712/- under Section 76 of the Finance Act 1994 and Rs. 1,00,000/- under section 73 of the Finance Act 1994 for not filing ST 3 returns.

5. Subsequently, in pursuance of Board's Notification No.26/2017-C Ex.(KT) dated 12.10.2017 read with Board's Order No.05/2017-SI dated 16.11.2017, the instant appeal has been taken on record for issuing Order-in-Appeal.

6. I find that in case of direct appeal, the impugned order was received by the appellant on 10.02.2017 and date of filing of appeal is 26.02.2017. Hence, the appeal has been filed within the stipulated time period and there is no delay in filing the appeal. The condition of pre-deposit also stand fulfilled.

7. Being aggrieved with the impugned order, the appellant has preferred the present appeal contending interests that their activity is liable for service tax and they paid service tax along with interest on 30.06.2015 and informed the jurisdictional range Superintendent of excise tax on 15.04.2015, the SCN in the present case has been issued on 16.05.2018 i.e. after lapse of one and half years from the date of payment of service tax. Under the above circumstances, the provision of sub section (1) of section 73 of the Finance Act 1994 will be applicable and no any SCN required to be served in respect of amount to pay. Regarding service tax on 'Rent a Cab' service as per notification No. 50/2012-ST dated 20.08.2012 which was effective from 01.07.2012, the service tax is to be paid by other than the service provider. The appellant vide letter dated 08.02.2018 submitted that they have to pay the service tax which is calculated as Rs. 32927.04 on the Taxable Value of Rs. 72,000/- (10% of Rs. 1,00,000/- i.e. amount received by them) in respect of 'Rent a Cab' service provided by them upto 30.06.2012. They enclosed Annexure 'A' along with their submission wherein they

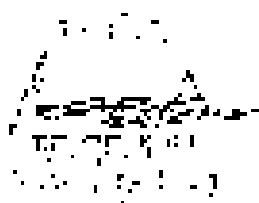

provided detail of each service provided to Ishwar Singh Rathore. Further vide their letter dated 01.03.2018 they submitted Revised calculation sheet wherein they claimed that only Rs. 8935/- has been short paid by them. They also provided copy of challan no. 57583 and claimed that short payment of Rs. 23280/- for the F.Y. 2012-14 has already been paid by them on 16.12.2016.

8. I find that there is some force in the arguments advanced by the appellant that the Service Tax Calculation is not done properly at the end of adjudicating authority before confirming the demand against the appellant. The appellant was not liable for payment of Service Tax on Rent a Cab Service after issuance of Notification No. 3002012-81 dated 20.06.2012 however, I find that this aspect has not been taken into consideration at the time of arriving at service tax demand calculation by the said adjudicating authority.

9. The adjudicating authority has imposed penalty of Rs. 01,00,000/- upon the appellant under Section 79 of the Finance Act, 1994 for not filing 05 (five) S-3 Returns. I find that the penalty imposed under Section 79 of the Finance Act, 1994 is exorbitant and beyond the maximum limit of Rs. 20,00,000/- prescribed under the statute and the same is required to be reduced in accordance with law.

10. I find in the instant case, there is factual mistake and the same is required to be rectified. Hence I remand back the case to the original adjudicating authority for fresh adjudication. The appellant is directed to produce all the payment receipts and calculation sheets before the adjudicating authority within 15 days from receipt of this order.

11. The appeal is disposed of in the above terms.



 (P. A. Vasaava)
 Commissioner (Appeals) /
 Commissioner
 CGST & Central Excise,
 Cutch (Gandhidham)

F. No. V 272-BVR/2017

Date: 15.03.2018

By R.P.A.D.

To,
 M/s. Shiv Shakti Finance,
 Near Ramar House, Opp. M.I.1 HSI 88
 Sundar Nagar 392002.

Copy to:

1. The Principal Chief Commissioner, CGST & Central Excise, Ahmedabad.
2. The Dy. Asst. Commissioner, Central Excise, Range Division, Bhavnagar.
3. The Dy. Asst. Commissioner (Sys.), I.C., Bhavnagar – for uploading on website

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