Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad

REGIONAL BENCH-COURT NO. 3

SERVICE TAX APPEAL NO. 11287 OF 2015- DB

(Arising out of OIA-RJT-EXCUS-000-APP-703-13-14 dated 18/02/2014 passed by Commissioner of Central Excise, Customs and Service Tax-RAJKOT)

DARSHAN CONSTRUCTION ....**Appellant**
Village-shinal, Taluka-gandhidham,
Kutch, Gujarat

VERSUS

CCE & ST-RAJKOT ......**Respondent**
Central Excise Bhavan,
Race Course Ring Road...Income Tax Office,
Rajkot,Gujarat-360001

APPEARANCE:
Shri Abhishek Doshi, C.A. for the Appellant
Shri Tara Prakash, Deputy Commissioner (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. C L MAHAR

Final Order No. 11394/2024

DATE OF HEARING: **23/02/2024**
DATE OF DECISION: **24.06.2024**

RAMESH NAIR

The issue involved in the present case is that whether the demand of Service Tax on the appellant who is sub-contractor for the period April, 2006 to August, 2007 confirmed by invoking extended period is time barred.

2. Shri Abhishek Doshi, learned Chartered Accountant appearing on behalf of the appellant at the outset submits that in respect of the demand of Service Tax for the period of April 2006 to August 2007 show cause notice was issued on 14th October, 2011. During the relevant period there was confusion whether sub-contractor is required to discharge the Service Tax where the main contractor has paid Service Tax on full value including the value of service provided by sub-contractor. Accordingly prior to board circular dated 23.08.2007 as per the board circular prevailing at that time the sub-contractor was not required to pay Service Tax. Thereafter, the board has changed the clarification vide Circular No. 96/2007-ST dated 23.08.2007. He also placed reliance on this Tribunal decision in the case of Shanti Construction Company

Final Order No. A/ 10327/2023 dated 27.02.2023 wherein on the same issue of time bar appeal was allowed.

3. Shri Tara Prakash, Deputy Commissioner (AR) appearing on behalf of the revenue reiterates the findings of the impugned order.

4. We have carefully considered the submission made by both the sides and perused the records. As per the fact of this case the Service Tax demand was raised on the appellant who is sub-contractor for the period April 2006 to August, 2007. In this matter show cause notice was issued invoking extended period on 14th October, 2011. The appellant has made their defense only on limitation. The issue of limitation is mixed question of fact and law. The appellant has heavily relied upon this Tribunal decision in the case of Shanti Construction Company (Supra). However the adjudicating authority and learned Commissioner (Appeals) had no occasion to consider the matter in the light of the said decision, hence the matter needs to be reconsidered comparing the fact and law point of the case of Shanti Construction supra with that of present case. Needless to say that appellant shall be given sufficient opportunity of hearing and also for making submission by the Adjudicating Authority. Since this matter pertains to very old period, the adjudicating authority shall pass a denovo order within a period of one month from date of this order.

5. In view of above observation, the impugned order is set aside. Appeal is allowed by way of remand to the Adjudicating Authority in the above terms.

(Pronounced in the open court on **24.06.2024** *)*

(RAMESH NAIR)
MEMBER (JUDICIAL)

(C L MAHAR)
MEMBER (TECHNICAL)

Arpita