CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL

West Zonal Bench AHMEDABAD

COURT NO. I

Appeal No. ST/346,374/2010-DB

[Arising out of Order-in-Original No. OIO-06-MP-2009 dated 30.10.2009 and OIO-16/COMMR/2010 dated 06.05.2010 passed by Commissioner of Central Excise & ST, Ahmedabad]

M/s. Gujarat Engineering Research Institute : **Appellant**

vs.

Commissioner of Central Excise & ST, Ahmedabad : **Respondent**

Appearance:

Shri N.V. Suchak, Chartered Accountant, for the Appellant
Shri Amit Kumar Mishra, Deputy Commissioner (AR) for the Respondent

CORAM:

Hon'ble Mr. Ramesh Nair, Member (Judicial)
Hon'ble Mr. Raju, Member (Technical)

Date of Hearing/ Decision : 03.01.2019

Final Order No. A/10270-10271 / 2019

Per : Ramesh Nair

The brief facts of the case are that the appellant is an arm of Government of Gujarat, they are providing service of Technical Testing and Analysis to the other departments of Government of Gujarat, against which charges for such services are collected and the same was deposited in the Government Treasury. The case of the department is that the appellant being provider of service of Technical Testing and Analysis, they are liable to pay service tax. Accordingly the demand of service tax was confirmed.

2. Shri N.V. Suchak, Ld. Chartered Accountant appearing on behalf of the appellant submits that the appellant is an arm of the Government of Gujarat and they collected mandatory fees at the rates prescribed in the schedule of rates and the amount was deposited in Government Treasury. Therefore, he submits that the appellant are not falling under the category of person liable to pay service tax for the reason that it is one of the arms of Government of Gujarat and provide service to other departments of the Government of Gujarat. He submits that the appellant cannot be alleged with the charge that they have suppressed the facts, mis-declared and defrauded etc. with intention to evade payment of service tax. He submits that the service tax was not being paid on the advice given by the Deputy Secretary, Government of Gujarat and being a Government enterprise, there cannot be any malafide intention to evade payment of service tax. He submits that in both the appeals the demand was raised invoking extended period of five years, therefore, the demand does not sustain on the ground of limitation itself. He placed reliance on the following judgments:-

(a) Dy. Commissioner of Police, Jodhpur vs. CCE – 2017 (48) STR 275 (Tri. Del.)

(b) Commissioner vs. Markfed Refined Oil & Allied Industries – 2009 (243) ELT A91 (P&H)

(c) CCE vs. Bharat Yantra Nigam Limited – 2014 (36) STR 554 (Tri. Del.)

(d) CCE vs. Haryana State Seed Certification Agency – 2016 (45) STR 148 (Tri. Chan)

(e) Rajasthan Renewable Energy Corpn. Limited vs. CCE – 2017 (51) STR 269 (Tri. Del.)

(f) Superintendent of Police vs. CCE – CESTAT Ahmedabad Order No. A/11428/2018 dated 13.07.2018.

3. Shri Amit Kumar Mishra, Ld. Dy. Commissioner (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order. He relied on the following judgments:-

(a) M.P. State Seed Certification Agency vs. CCE, Bhopal – 2017 (4) GSTL 206 (Tri. Del.)

(b) Pondicherry Engineering college vs. CCE, Puducherry – 2017 (3) GSTL 163 (Tri. Chennai)

(c) Mathania Fabrics vs. CCE, Jaipur – 2008 (221) ELT 481 (SC)

(d) CCE, Surat vs. Neminath Fabrics Pvt. Limited – 2010 (256) ELT 369 (Guj.)

(e) Union Quality Plastic Limited vs. CCE & ST., Vapi – 2013 (294) ELT 222 (Tri. LB)

(f) Order of Revisionary Authority, Department of Revenue - in the case of Goa Shipyard Limited - reported at 2014 (33) STR 203 (GOI).

4. On careful consideration of the submissions made by both the sides and perusal of the record, we find that without going into merits, the appeals can be disposed of on limitation itself. We find that there is no dispute that the appellant are a part of the Government of Gujarat, providing services of Technical Testing and Analysis to the other departments of the same Government of Gujarat. Being a Government organization, the suppression of facts, mis-declaration, fraud, collusion, willful mis-declaration etc. cannot be alleged against the appellant for the reason that there is no individual's interest or benefit is involved and

therefore, there cannot be an intention to evade payment of service tax. In respect of service provided other than the Government agencies, the appellant were admittedly paying the service tax. Therefore, there was a bonafide belief that being a Government organization and providing service to the government departments of the same Government of Gujarat, does not attract service tax. The Hon'ble High Court of Punjab & Haryana in the case of *Markfed Refined Oil & Allied Industries (supra)* has passed the following order:-

> "The revenue has filed the instant appeal under Section 35G of the Central Excise Act, 1944 challenging order dated 28-3-2008 passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi (for brevity 'the Tribunal'). The Tribunal has recorded a categorical finding that there is no material brought on record which may lead to an inference that there was any intention to evade duty by playing fraud or collusion. The dealer-respondent is a government undertaking namely Markfed. After recording the aforesaid finding, the order of penalty has been set aside by the Tribunal.
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> Having heard learned counsel, we find that no exception is provided to interfere in the impugned order in which pure findings of fact have been recorded. Once the dealer-respondent is a government organisation like Markfed it is not easy to infer any evasion of duty much less its intention to do so. There is thus no merit in the appeal as no question of law warranting its admission would arise. Dismissed".

In the case of Bharat Yantra Nigam Limited (supra), this Tribunal on the issue of limitation has held as under :-

> **"4.** ……. ……. However, since the respondent are a Public Sector Undertaking, the longer limitation period for demand of non-paid service tax under proviso to Section 73(1) would not be invocable, as in the circumstances of the case, the allegation of wilful misstatement, suppression of facts or deliberate contravention of the Rules to evade the payment of service tax, cannot be made against the respondent. Therefore the service tax demand would be confined only to normal limitation period. In view of the circumstances of the case, the penalty also has to be waived by invoking Section 80."

In the case of *Haryana State Seed Certification Agency (supra*), this Tribunal has held as under :-

> **"7.** We also observed that the show cause notice have been issued by the invoking extended period of limitation, the demand of extended period of limitation is not sustainable as there was no *mala fide* intention of the respondents not to pay service tax in the light of the clarification issue by the Commissioner of Service Tax, Ahmedabad on 27-9-2006, wherein it has been clarified as under :
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> > *Para (2) : Office of the Commissioner of service tax, Ahmadabad clarified in that letter under reference that the certification agency has been carrying out the testing the certification of seeds in discharge of the obligations under the Seeds Act, 1966. Since, the function carried out in discharge of any statutory obligation is not considered as a service, the activity of seed testing and clarification carried out by the Agency would not be covered under Service Tax.*
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> Therefore, we hold that the demand of extended period of limitation is not sustainable. We further observed that the respondents have not recovered any amount over and above the charges paid by the service recipient for certification of seeds. In that circumstance, the respondent is entitle for cum tax benefit. In view of the above observations, we hold that the demand for normal period is payable with cum tax benefit. No penalties are warranted in the lack of *mala fide* intention to evade payments of service tax."

On the similar issue, in the case of *Rajasthan Renewable Energy Corpn. Limited,* this Tribunal passed the following order:-

> **"5.** We also further note that the appellant is a public sector undertaking, being a State Govt. enterprise, in such a case allegation of wilful misstatement, suppression of facts or deliberate contravention of Rule with an intention to evade the duty payment cannot be made. Tribunal has observed the same in the case of *CCE, Allahabad* v. *Bharat Yantra Nigam Ltd. [2014 (36) S.T.R. 554 (Tri.-Del.)].*
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> **6.** For the reasons recorded above, we hold that the extended period is not available to the Revenue. However, a part of the demand falls within the limited period, which would be re-quantified by the adjudicating authority."

The above decision was upheld by the Hon'ble High Court of Rajasthan reported at – 2018 (15) GSTL 661 (Raj).

5. In view of the above judgments, it can be seen that the Hon'ble High Courts and the Tribunal had taken a consistent view that in case of non-payment of duty/ tax, malafide intention cannot be alleged in the case of Government Agency. Therefore, ratio of the above judgment is squarely applicable in the case of present appeals.

Accordingly, we set-aside the impugned orders and allow the appeals on limitation only without going into the merits of the case.

(Operative part of the pronounced in the open court)

Raju	**Ramesh Nair**
Member (Technical)	**Member (Judicial)**

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