CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL AHMEDABAD

REGIONAL BENCH, COURT NO. 3

SERVICE TAX APPEAL NO. 10831 OF 2019

[Arising out of OIO-RAJ-EXCUS-000-COM-09-17-18 dated 29/12/2017 passed by Commissioner of Central Excise, Customs and Service Tax-RAJKOT]

MALANI CONSTRUCTION CO **Appellant**
Malani Complex, 58-Kotecha Nagar,
Kalawad Road, Rajkot,
Gujarat

Vs.

C.C.E. & S.T. –RAJKOT **Respondent**
Central Excise Bhavan, Race Course Ring Road,
Income Tax Office,
Rajkot,
Gujarat-360001

Appearance:
Shri Parth Rachchh, Advocate for the Appellant
Shri Anand Kumar, Superintendent (AR) for the Respondent

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

FINAL ORDER NO. 12404/2024

Date of Hearing : 12.07.2024
Date of Decision : 18.10.2024

RAMESH NAIR

The issue involved in the present case is whether the appellant is liable to pay service tax in respect of construction of residential complex for SRP group 8 for Gujarat State Police Housing Corporation Ltd.

2. Shri Parth Rachchh learned counsel appearing on behalf of the appellant at the outset submitted that the issue is no longer res-integra as the same has been decided in favour of the assessee on the ground that the construction services for self use by the Gujarat State Police Housing Corporation Ltd therefore it is not liable to service tax. He further submits that in the facts of the present case since there is no suppression of facts or

mis-declaration on the part of the appellant the demand is hit by limitation as the demand for extended period cannot be sustained. He further submits that in the present appeal the show cause notice is for the subsequent period and on the same issue the appellant were issued a show cause notice dated 09.10.2002, for this reason also once the fact was known to the department the subsequent show cause notice cannot invoke the extended period therefore the demand in the present appeal being covered under extended period will not sustain. He placed reliance on the following judgments.

- RD Contractor & Company V/s. CCE & ST, Anand
  2023(2) TMI 946- CESTAT Ahmedabad
- DH Patel V/s. CCE & ST- Surat-1
  2023(4) TMI 920-CESTAT Ahmedabad
- Navtar Construction Co. V/s. CCE & ST, Surat
  2023(4) TMI 438- CESTAT Ahmedabad
- RN Dobariya V/s. CCE & ST, Surat-1
  2023(2) TMI 779- CESTAT Ahmedabad
- Ample Construction Company V/s. CCE & ST, Rajkot
  2023(7) TMI 1021-CESTAT Ahmedabad
- CESTAT, Ahmedabad final order No. A/12276 - 12303/2018 dated 22.10.2018.
- Nizam Sugar Factory V/s. CCE, AP 2006(197) ELT 465(S.C.)

3. Shri Anand Kumar learned superintendent AR appearing on behalf of the revenue reiterates the findings of the impugned order.

4. We have carefully considered the submissions made by both the sides and perused the records. From the overall facts of the case we are of the view that this particular appeal can be disposed of only on the ground of limitation without going into merit of the case. Therefore, we address only the ground of time bar in this order. We find that the appellant were earlier issued a show cause notice dated 09.10.2004 for the period 2010-2011 and 2011-2012 on the same issue as in the present case the show cause notice

dated 10.04.2017 was issued covering a period of October, 2011 to March, 2012 invoking the extended period of limitation. We find that it is a settled legal position by the Hon'ble Supreme Court in the case of Nizam Sugar Factory Vs. CCE AP 2006 (197) ELT 465 (SC) wherein the Hon'ble Supreme Court observed that once fact on a particular issue is known to the department thereafter the subsequent show cause notice cannot invoke extended period. Moreover, in the present case the revenue was very well aware about the activity of the appellant. Therefore there is absolutely no suppression of fact or mis-declaration on the part of the appellant, accordingly the show cause notice could not have invoked the extended period for the demand of Rs. 3,15,700/-.

5. Accordingly the demand is hit by limitation. Hence, the impugned order is set aside. The appeal is allowed.

(Order pronounced in the open Court on 18.10.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(C. L. MAHAR)
MEMBER (TECHNICAL)

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