CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH : AHMEDABAD

REGIONAL BENCH - COURT NO. 3

SERVICE TAX Appeal No. 52 of 2012-DB

[Arising out of Order-in-Original/Appeal No COMMR-A--369-VDR-I-2011 dated 10.10.2011 passed by Commissioner of Central Excise, CUSTOMS (Adjudication)-VADODARA-I]

Gujarat Engineering Research .... **Appellant**
Race Course, VADODARA,
GUJARAT - 390007

VERSUS

Commissioner of Central Excise & ST, Vadodara-i .... **Respondent**
1st Floor...Central Excise Building,
Race Course Circle, Vadodara, Gujarat-390007

APPEARANCE :

Shri Krutesh Patel, Chartered Accountant for the Appellant
Shri Tara Prakash, Assistant Commissioner (AR) for the Revenue.

CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. RAJU, MEMBER (TECHNICAL)

DATE OF HEARING : 07.12.2022
DATE OF DECISION: 21.12.2022

FINAL ORDER NO. A/12225 / 2022

RAMESH NAIR :

The issue involved in the present case is that whether the demand of service tax raised against the appellant M/s. Gujarat Engineering Research is not maintainable on the ground of time-bar or otherwise.

2. Shri Krutesh Patel, learned Chartered Accountant appearing on behalf of the appellant at the outset submits that in the appellant's own case, this Tribunal has held that demand for extended period is not maintainable therefore, on the same line, demand in the present case raised by invoking extended period is not sustainable. He placed reliance on the following decisions:-

(a) Gujarat Engineering Research Institute vs. CCE & ST, Ahmedabad – Order No. A/10270-10271/2019

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

(c) Commissioner vs. Marked Refined Oil & Allied Industries - 2009 (243) ELT A91 (P&H)

(d) CCE vs. Bharat Yatra Nigam Limited - 2014 (36) STR 554 (Tri. Del)

(e) CCE vs. Haryana State Seed Certification Agency - 2016 (45) STR 148 (Tri. Chad)

(e) Superintended of Police va. CCE - CESTAT Ahmedabad order No. A/11428/2018 dated 13.07.2018

3. Shri Tara Prakash, learned Assistant Commissioner (AR) appearing for Revenue reiterates the findings of the impugned order.

4. On careful consideration of the submissions made by both the sides and perusal of record, we find that in the present case the demand of service tax pertains to the period March/July 2007, 2003 to May 2007 and the show cause notice was issued on 11.01.2009. Therefore, the entire demand is under the extended period of limitation. This Tribunal, considering the status of the appellant and facts of the case which are absolutely identical to the facts of present case, vide order No. A/10270-10271/2019 dated 03.01.2019 held that the demand is time-barred and appeal was allowed on limitation. The said order is reproduced below:-

> "**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.)].

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."

5. From the above decision of this Tribunal it can be observed that issue and facts of the above case and the case in hand are identical therefore, the demand raised in the present case for extended period is not maintainable on the ground of limitation itself. Hence, the impugned order is set-aside and the appeal is allowed on limitation with consequential relief.

(Pronounced in the open court on 21.12.2022)

(Ramesh Nair)
Member (Judicial)

(Raju)
Member (Technical)

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