CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>ALLAHABAD</u>

REGIONAL BENCH - COURT NO.I

Service Tax CROSS Application No.70163 of 2020
(On behalf of the Respondent)
In
Service Tax Appeal No.70394 of 2020

(Arising out of Order-in-Appeal No. GZB-EXCUS-000-AAPL-MRT-40-41-2020-21, dated-10/06/2020 passed by Commissioner (Appeals) CGST, Meerut)

Commissioner, Central Goods & Service Tax, Ghaziabad

.....Appellant

(CGO Complex-II, Kamla Nehru Nagar,
Ghaziabad-U.P.-201002)

VERSUS

M/s Shree Dhama Infrastructure (P) Ltd., ...Respondent
(Radha Madhav, 3F7, S-2, Block-F, Nehru Nagar,
Ghaziabad, Uttar Pradesh 201001)

<u>APPEARANCE:</u>

Shri Santosh Kumar, Authorized Representative for the Appellant
Shri Rajesh Chibber, Advocate for the Respondent

CORAM: **HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)**
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO.<u>-70955/2024</u>

DATE OF HEARING : 18.12.2024
DATE OF DECISION : 18.12.2024

<u>SANJIV SRIVASTAVA:</u>

This appeal filed by Revenue is directed against the Order-In-Appeal No. GZB/EXCUS/000/APPL-MRT/40-41/2020-21 dated 10-06.2020 of the Commissioner, CGST(Appeals), Meerut. By the impugned order, the demand made by invoking extended period of limitation has been set aside by relying on the decision of Hon'ble Supreme Court in case of Nizam Sugar Factory [2006 (197) ELT 465 (SC)]

2.1 Subsequent to the SCN dated 23.01.2015, another show cause notice dated 23.10.2018 was issued to the respondents stating as follows:

> *"13. It also appears that M/s Shree Dhama Infrastructure Pvt. Ltd. have not disclosed the true and correct value of their taxable services and the Service Tax payable thereon. As well, they had not filed their ST-3 returns relevant for the period April 2013 to March, 2016 as well as for further period from April, 2016 to June, 2017. Non filing of ST-3 returns during prescribed intervals appears to be their conscious act to suppress the transactions in respect of taxable services provided to various clients with intent to evade payment of service tax payable for the period during the years 2013-14 to 2015-16. This suppression of taxable value and evasion of service tax would have never come to the notice of the Department if the investigation was not done against the party, thus it appears that they have indulged in suppression of material facts from the Department with intent to evade payment of Service Tax. Therefore, it appears that all essential elements exist in the instant case for invoking the extended period in terms of the Proviso to Section 73(1) of the Finance Act, 1994 to demand the Service Tax amounting to Rs. 1,86,10,520/- (including Edu. Cess, SHEC, SBC), from M/s Shree Dhama Infrastructure Pvt. Ltd., under the extended period of limitation by invoking the Proviso to Section 73(1) of the Act. Further, the party also appears liable to pay interest under Section 75 of the Finance Act, 1994 on their Service Tax liability yet not discharged.*
>
> *14. And whereas, it appears that the party have rendered themselves liable for penal actions under Section 77(1)(d) of the Finance Act 1994 and late fee/ penalty under Section 70(1) of the Finance Act, 1994 read with Rule 7C of the Service Tax Rules, 1994, by way of contravening the provisions of Rule 6 and 7 of the Service Tax Rules*

1994 read with Section 68 and 70 of the Finance Act, 1994, respectively in as much as;

(i) that the party have failed to pay the service tax due thereon electronically as required in accordance with the provisions of this Chapter or the rules made thereunder,

(ii) that the party have not filed any of their ST-3 returns for the period from 01.04.2013 to 30.06.2017 contravening the provision of Section 70 of the Finance Act, 1994.

15. And whereas, from the foregoing paras, it appears that the party had willfully failed to disclose wholly or truly all material facts and had contravened various provisions of the Act and the Rules, with intent to evade payment of Service Tax. The party has deliberately suppressed the fact with regard to the taxable services provided by them to their clients during the period from 2013-14 to 2015-16, and also they failed to declare actual gross receipt of the taxable services provided with their sole intent to evade payment of due Service Tax. Therefore, it appears that the party is also liable for penal action under Section 78 of the Finance Act, 1994.

16. …...

17. Now, therefore, M/s Shree Dhama Infrastructure Pvt. Ltd., Radha Madhav. 3F7, S-2, Block-F, Nehru Nagar, Ghaziabad are hereby required to show cause to the Additional/ Joint Commissioner, Central GST Commissionerate, Ghaziabad, having office at C.G.0.Complex-I1, Kamla Nehru Nagar, Ghaziabad, as to why :-

(i) Service Tax amounting to Rs. 1,86,10,520/- (Rupees One Crore Eighty Six Lakhs Ten Thousand Five Hundred Twenty only), including Edu. Cess SHE Cess & SBC, for the period 2013-14 to 2015-16 should not be demanded and recovered from them

by invoking the extended period of limitation under the Proviso to Section 73(1) of the Finance Act, 1994;

(ii) Interest payable against the said demand of the Service Tax should not be and recovered from them under Section 75 of the Finance Act, 1994;

(iii) Penalty should not be imposed upon them under the provisions of Section 77(1)(a) of the Finance Act, 1994, for the reasons as discussed above.

(iv) Penalty should not be imposed upon them under the provisions of Section 78 of the Finance Act, 1994, for the reasons as discussed above.

(v) Late fee/penalty should not be recovered from them under Section 70(1) of the Finance Act, 1994 read with Rule 7C of the Service Tax Rules, 1994, for the reasons as discussed above."

2.2 This show cause notice was adjudicated as per order in original No 29/Addl. Commr/ST/GZB/2018-19 dated 28.02.2019 holding as follows:

ORDER

(i) I confirm the demand of Service tax amounting to Rs. 1,86,10,520/- (Rupees One Crore Eighty Six Lakhs Ten Thousand Five Hundred Twenty only), including Edu. Cess, SHE Cess & SBC, short/ not paid during the period 2013-14 to 2015-16 by invoking the extended period of limitation under the Proviso to Section 73(1) of the Finance Act, 1994 as discussed supra

(ii) I order for recover of Interest at the appropriate rate on the aforesaid amount of service tax from the party under Section 75 of the Finance Act 1994 at applicable rates.

(iii) I order for recovery of an amount of RS. 1,80,000/- (Rupees one lakh eighty thousand only) from the party in terms of Section 70(1) of the Finance Act, 1994 read with Rule 7C of the Service Tax Rules, 1994, as discussed above

(iv) I impose a Penalty of Rs, 1,86,10,520/- (Rupees One Crore Eighty Six Lakhs Ten Thousand Five Hundred Twenty only) upon the party under Section 78 of the Finance Act 1994 for suppression of facts / documents with intend to evade payment of service tax as discussed supra

(v) I also impose a Penalty of Rs. 10,000/- (Rupees Ten Thousand only) upon the party under Section 77 (1) (a) of the Finance Act 1994 for contravention of the provisions of Section 70 of the Act read with Rule 7 ibid.

(vi) *I also impose a penalty of Rs1,00,000/- (Rupees One Lakh Only) upon Shri Rakesh Upadhyay, Managing Director of M/s Shree Dhama Infrastructure Pvt. Ltd., Radha Madhav, 3F7, S-2, Nehru Nagar, Ghaziabad under Section 78A of the Finance Act, 1994.*

2.3 Aggrieved respondent filed an appeal before the Commissioner (Appeal). The impugned order while upholding the demand made on the merits, have set aside the same on the ground of limitation.

2.4 Aggrieved Revenue has filed this appeal stating following grounds:

- The Commissioner (Appeals) in his subject Order-in-Appeal has held that that the extended period was not available for raising the subject demand when the department had already issued a Show Cause Notice dated 23.01.2015 for the previous period upto December, 2015 (factually upto December, 2012), on the same issue, and accordingly, he has ordered that the demand of service tax beyond the normal period was, therefore, not sustainable and therefore penalty equal to the demand of service tax imposed under Section 78 of the Finance Act, 1994 was also not sustainable. As is apparent from the facts of the case, in his Order-in-Appeal dated 10.06.2020 the Commissioner (Appeals) has taken superficial note of the premise of the subject case but has arbitrarily altogether disregarded the same while coming to the final conclusion and passing the subject order and thus the said order is a non speaking order. After the issuance of the initial Show Cause Notice bearing No. 28/Commr/ST /GZB/95/2014 dated 23.01.2015 for raising the demand for the period upto December, 2012 and the confirmation of the said demand vide the said order vide Order-in-Original No. 20/Commr/ST/GZB/2015-16 dated 29.03.2016, it was statutorily binding on the part of the said party to show the requisite details in their ST-3 returns and in case of non-compliance they were required to inform the department that despite issuance of the SCN for the earlier period they continued to follow the earlier practice of not paying the subject service tax on the services being rendered by them. The facts of the case amply prove that the said party did not disclosed the true and correct value of their taxable services and the Service Tax payable thereon as they had not filed their ST -3 returns relevant for the period from April, 2013 to June, 2017 which appeared to be their conscious act to suppress the transactions in respect of taxable services provided to various clients with intent to evade payment of service tax payable for the said period. Later, on the basis of intelligence gathered by the Department regarding nonpayment of service tax by the said party the said action, as entailed in the foregoing paragraphs, was initiated and carried out by the Department whereby the subject willful and deliberate nonpayment of the subject amount of service tax came to the knowledge of the Department. As is apparent from the facts of the case, it was only after the search operations carried out by the officers of DGCEI and subsequently issuance of summons issued by the Officers of CGST Commissionerate Ghaziabad, that the said party submitted he requisite documents and details on 05.10.2018 (Balance Sheets, Party wise bills, payments made to various labour contractors, Form 26AS, Month wise details, etc. for the fiscal years 2013-14 to 2017-18 (upto June, 2017). Thus, the subject demand has been based on the basis of the figures available in the Balance Sheets for the said relevant period and has not been based on the basis of facts and figures appearing in the respective ST-3 returns as the said party had willfully and deliberatively not filed their ST-3 returns. It is in consonance with the said facts that the adjudicating authority had rightly confirmed the subject demand by invoking the extended period of time limitation. Moreover, the said initial case of SCN dated 23.01.2015 was for evasion of service tax in case of 'Construction of Residential Complex Service rendered to M/s SJP Estate Developers and M/s Bhayana Builders and whereas the subject case of SCN dated 23.10.2018 was for evasion of service tax in case of 'Works Contract Service' rendered to M/s Sikka Infrastructure (P) Ltd.; M/s S.V.P. Builders (India) Ltd.; and M/s Deepsons India (P) Ltd., as is apparent from the details respectively appearing in the said SCNs/related OIOs. However, the Commissioner (Appeals) has only taken a superficial note of the said circumstantial facts and has not considered and discussed them on statutory merits and has altogether discarded them while arriving at the final conclusion.

- The Order dated 10.06.2020 of the Commissioner (Appeals) appears to have been passed in disregard of the pronouncement made in the following cases:
    - Noble Detective & Security Service (P) Ltd. [2014 (34) S.T.R. 289 (Tri. - Ahmd.)]
    - Chhatariya Dehydrates Exports [2020 (33) G.S.T.L. 432 (Tri. - Ahmd.)]
    - Days Inn Deccan Plaza [2016 (45) S.T.R. 502 (Mad.)]
    - Creative Cosmetics [1993 (63) E.L.T. 348 (Tribunal)]
    - M.M. Cylinders (P) Ltd. [2012 (277) E.L.T. 78 (Tri. Bang.)

  - Chemphar Drugs & Liniments [1989 (40) E.L.T.276 (S.C.)]
- The Commissioner (Appeals), together with apparently erring in holding that the demand of service tax beyond the normal period was not sustainable, as above, has also appeared to have held that therefore penalty equal to the demand of service tax imposed under Section 78 of the Finance Act, 1994 was also not sustainable. However, as is evidentially apparent from the facts and circumstances of the subject case, as above, the subject demand had rightly been raised by invoking the extended period of limitation and has rightly been so confirmed by the adjudicating authority. Accordingly, mandatory penalty equal to tax had rightly been imposed upon the said party by the adjudicating authority under the provisions of Section 78 of the Finance Act, 1994. Thus with respect to imposition of penalty, the subject Order-in-Appeal is in complete disregard of the established tenets of law and the related pronouncements made in the following cases:
  - Dharamendra Textile Processors [2008 (231) ELT 3 (SC)]
  - Rajasthan Spinning & Weaving Mills [2009 (238) ELT 3 (SC)]
  - Inox Leisure Limited [2016 (42)STR 497 (Trib-Mumbai)]
  - Nirayu Pvt. Ltd. [2017 (7) G.S.T.L. 14 (Guj.)]
  - Haryana Metals Ltd. [2018 (360) E.L.T A136 (Bom.)]

2.5 Respondents have filed cross objection in the matter, supporting the impugned order on limitation and have also challenged the confirmation of demand on the merits of issue.

3.1 We have heard Shri Santosh Kumar, Authorized Representative for the Revenue and Shri Rajesh Chibber, Advocate for the respondent.

4.1 We have considered the impugned order along with the submissions made in the appeal, cross objections and during the course of argument.

4.2 Order in original has recorded finding as follows to hold that extended period of limitation as per proviso to Section 73 (1) will be invovkable:

> *"6.3 Let me first look into whether the extended period of limitation is invokable to raise the impugned demand. I observe that the impugned show cause notice itself speaks that the party had already been served a Show Cause Notice bearing No. 28/Commr/ST /GZB/95/2014 dated 23.01.2015 by the Commissioner, Central Excise & Service Tax Commissionerate, Ghaziabad for the period upto December, 2012 which was adjudicated vide Order-in-Original No. 20/Commr/ ST/GZB/2015-16 dated 29.03.2016 and the jurisdictional Range Superintendent was making correspondences with the party through letters/ summons for furnishing of details of taxable services provided by them in the period subsequent to that covered in the demand notice i.e after December, 2012. The party has simply submitted that subsequent demand cannot be raised by invoking extended period of limitation in view of the judgment of Hon'ble Apex court in the case of Nizam Sugar Factory reported in 2008 (8)STR314 (SC). In my view, the facts of the instant case are entirely different from that of Nizam Sugar Factory. In this case the party did not file the ST-3 returns for the relevant period. Also they did not furnish the details sought by the jurisdictional Superintendent for the further period after issuance of show cause notice for the period upto Dec'2012. The party has not denied the allegation regarding non-filing of ST -3 returns for the period from April 2013 to March, 2016 as well as for April, 2016 to June, 2017 neither during investigation nor during instant proceeding. It is a settled law laid down by the Hon'ble Apex Court in the case of M/s*

Cosmic Dye chemical Vs Collector of Cen. Excise, Bombay [1995 (75) E.L.T. 721 (S.C.) that if there is deliberate suppression of facts the extended period of limitation is invokable. In the circumstance of the instant case the non filing of ST-3 returns by the party was their deliberate act to suppress the transactions in respect of taxable services provided to various clients with intent to evade payment of service tax payable for the period during the years 2013-14 to 2015-16.

6.4 The party itself admitted that due to financial crises they were unable to pay S. Tax and the system were not accepting the return, hence no ST-3 Return filed. Here it is pertinent to mention that, Return (ST-3) can be filed in this situation as it not related to payment or Challan Hence, it is conscious decision of party not to file return so that S. Tax cannot be ascertained by the dept. Hence the party again suppressed the duty liability. The suppression of taxable value and evasion of service tax would have never come to the notice of the Department if the investigation was not initiated against the party by the DGGSTI. It has never been the intent of law that extended period is not invokable even if the assessee continued to suppress the . information and failed in the statutory duty of assessment of tax and filing ST-3 return in subsequent period. The sole argument of the party that they did not file return due to financial constraints has no value as it may delay the payment of tax but not filing of returns or furnishing of details to the department. Therefore, in my view the party has acted in deliberate and willful nanner to suppress rnaterial facts from the Department with intent to evade payment of Service Tax, Therefore, all essential elements exist in the instant case for invoking the extended period in terms of the Proviso to Section 73(1) of the Finance Act, 1994

I am of the opinion that non-filing of ST-3 returns was their conscious deliberate act to suppress the vital *information from the department with intent to escape payment of applicable Service Tax and to evade the payment of tax. I am therefore, hold the party liable for penal actions under Section 77(1)(d) of the Finance Act 1994 as well under Section 78 of the Finance Act 1994 68 As regards to proposed penalty under Section 78A of the Finance Act, 1994 upon Shri Rakesh Upadhyay, Managing Director of M/s Shree Dhama Infrastructure Pvt. Ltd., I observe that Shri Rakesh Upadhyay was in full control over the affairs of M/s Shree Dhama Infrastructure Pvt. Lid and its financial transactions. Being Managing Director no decisions was possible in the financial matters of the party without his consent and directions as evident from the statement dated 29.07.20 15 tendered by him before SIO of DGCEI, Regional Unit, Meerut. Thus, in my view, he was instrumental in deliberate suppression of information from the department and his act lead into evasion of Service Tax by the party, therefore he is liable for penal action under Section 78A of the Finance Act, 1994*

4.3 Impugned order records as follows for holding that extended period of limitation as per proviso to Section 73 (1) will not be available for making this demand:

"6. I have carefully gone through the facts and records of the case as well as the submissions made, by the appellant. The appellant no. 1 has contended that earlier he was issued a show cause notice dated 23.01.2015 in the similar matter for the period upto December-2015. Therefore, the subsequent show cause notice issued for demand of service tax by invoking extended period of limitation was not sustainable. In this regard, find that this contention was also put forth by the appellant before the adjudicating authority while submitting reply to, the SCN. However, the adjudicating authority by stating that the appellant no. 1 had acted in deliberate and willful manner to suppress material facts from the department with intent

to evade payment of service tax and the contention of the appellant no. 1 that he could not file the ST-3 returns due to non-deposit of ue service tax was not tenable. In this regard, I find that earlier a show cause notice dated 23.01.2015, on the identical issue, was issued to the appellant no. 1 for demand and recovery of service tax on work contract services by invoking extended period of limitation. The appellant, in this regard, has cited the decision of Hon'ble Supreme Court in the case of Nizam Sugar Factory Versus CCE [as reported in 2006 (197) ELT 465 ($C)], wherein it was held that`no demand by invoking extended period could be issued if the show cause notice on the similar issue had already been issued earlier. The relevant part of the judgement is as under:.

"Demand - Limitation - Suppression of facts - All relevant facts in knowledge of authorities when first show cause notice issued - While issuing second and third show cause notices, same/similar facts could not be taken as suppression of facts on part of assessee as these facts already in knowledge of authorities - No a suppression of facts on part of assessee/appellant - Demands and penalty dropped- - Sections 11A and 11AC of Central Excise Act, 1944. [paras 9, 10]

Therefore, the contention of the appellant that extended period was not invocable for raising the demand for the subsequent period is tenable, and the demand of service tax beyond the normal period is time barred. The demand beyond the normal period was, therefore, not sustainable. Accordingly, mandatory penalty imposed under Section 78 of the Act was also not sustainable."

4.4 In their appeal Revenue has while relying on certain decisions of have also reproduced certain facts, stating that the case of evasion was unearthed for the reason of the search conducted by the officers of Director General Central Excise Intelligence etc., and the fact that the respondent was deliberately not providing the information/ documents when called for. To ascertain the correctness of the facts stated in the ground of appeals, we perused the Show Cause Notice and are reproducing the entire investigations undertaken in the matter as recorded therein.

> *"4. Whereas, on an information that M/s Shree Dhama Infrastructure Pvt. Ltd. was not discharging their Service Tax liability, an investigation against them was initiated by the officers of the DGCEI (now DGGI), Regional Unit, Meerut by way of conducting a search of their office premises at SF-15B, The Mall, Niho Scotish Garden, Ahinsha khand-II, Indirapuram, Ghaziabad on 17.07.2015. During the search proceedings undertaken there, various available records of the party were resumed under Panchnama dated 17.07.2015 (RUD-1). Later, 04 statements of Shri Rakesh Upadhyay, Managing Director of M/s Shree Dhama Infrastructure Pvt. Ltd. were recorded on subsequent dates i.e. ated 20.07.2015, 29.07.2015, 12.10.2015 and 13.01.2017 (collectively RUD-2), before the Senior Intelligence Officer of DGCEI, Regional Unit, Meerut. During the course of investigation, it came to notice of the officers of DGCEI that the said party had already been served a Show Cause Notice bearing No. 28/Commr/ST/GZB/95/2014 dated 23.01.2015. by .the Commissioner, Central Excise & Service Tax Commissionerate, Ghaziabad for the period upto December, 2012; that the said SCN was adjudicated under Order-in-Original No. 20/Commr/ ST /GZB/2015-16 dated 29.03.2016; that the jurisdictional Range Superintendent was already making correspondences with the party through letters/ summons for the purpose of furnishing of details of taxable services provided by them for the period subsequent to that covered in the demand notice. Therefore, to avoid dual investigation, the case being investigated by the officers of DGCEI was forwarded to Central Goods & Services Tax Commissionerate, Ghaziabad by the Deputy Director, DGGSTI, Zonal Unit, Meerut in the month of October, 2017 for further investigation*

5. And whereas, to further investigate the matter, summons dated 03.11.2017 (RUD-3) was issued to the party by the Superintendent (Anti-Evasion), Central GST Commissionerate, Ghaziabad requiring them to submit the documents required for investigation of the instant case. In response to the said summons, Shri Rakesh Upadhyay, Managing Director of M/s Shree Dhama Infrastructure Pvt. Ltd. Ghaziabad appeared before Superintendent (AE) on 19.12.2017 and submitted documents/ records such as copies of Form 26AS for the years 2013-14 to 2016-17 copies of invoices/RA Bills (RUD-4) in respect of works contract services provided by them during April, 2013 to December, 2015. He also tendered his voluntary statement dated 19.12.2017 (RUD-5) under Section 14 of the Central Excise Act, 1944, as made applicable to Service Tax matters under Section 83 of the Finance Act, 1994, wherein Shri Rakesh Upadhyay mainly deposed, inter alia, that -

- *His firm was in existence since February 2010; and that he was looking after the firm as its Managing Director from the beginning*
- *His firm had been discharging the Service Tax liability in installments;*
- *ST-3 returns for the period 2014-15 onwards had not been filled;*
- *They had been served upon a notice to show cause dated 23.01.2015 demanding Service Tax;*
- *that the said notice to show cause was adjudicated through Order-in-Original dated 29.03.2016, whereby the demand of Service Tax proposed in the notice to show cause was confirmed; and*
- *that they had gone in appeal in CESTAT, Allahabad against the said Order-in-Original*

6. Whereas, Shri Rakesh Upadhyay also admitted that for the period from April, 2013 to June, 2017, Service Tax of Rs. 1,22,88,795/- was payable by his company He also informed that they were undergoing severe financial crunch and huge amount of dues is pending with M/s Sikka

Infrastructure (P) Ltd., M/s SVP Builders and M/s Niho Constructions Ltd.

7. And whereas, further enquiry was also made with the party by way of issuing summons dated 10.08.2018 and 26.09.2018. In response, the party vide their letter dated 05.10.2018 (RUD-6) informed that due to adverse financial conditions, they could not deposit the Service Tax by due date. They also enclosed following documents/details ;-

(i) Summary of Party-wise bills relevant for the period from 01.04.2013 to 31.12.2015 (RUD-6A);

(ii) Details of their Service Tax liability for the period from 01.04.2013 to . 30.06.2017 (RUD-6B), which is detailed as below :-

Table - 1

(Figures in Rs.)

Financial Year	Total amount Credited	Taxable Amount	Service Tax payable by the party	Service Tax paid by the party
2013-14	11,75,49,787	4,70,19,915	58,11,661	0
2014-15	2,44,62,494	97,84,998	12,09,426	0
2015-16	3,17,84,550	1,27,13,820	17,80,312	0
2016-17	0	0	0	0
2017-18	0	0	0	2,00,000
TOTAL	17,37,96,831	6,95,18,733	88,01,399	2,00,000

(iii) Summary of payments made to different labour/labour contractors for the period 01.04.2013 to 30.06.2017;

(iv) Copies of Balance Sheets of the company for the years 2013-14 to 2016-17.

8. Whereas, Shri Rakesh Upadhyay, Director of M/s Shree Dhama Infrastructure (P) Ltd., Radha Madhav, 3F7, S-2, Block-F, Nehru Nagar Ghaziabad also appeared before the Superintendent (Anti-Evasion), CGST Commissionerate, Ghaziabad on 12.10:2018 and tendered his further voluntary statement relevant to the present investigation on 12.10.2018 (RUD-7), whereunder he mainly stated that :-

- *During tendering his previous statement dated 19.12.2017, he calculated his Service Tax liability by including the value of the goods supplied on FOC (Free of*

Cost) basis by M/s Sikka Infrastructure (P) Ltd., in the taxable value of the 'Work Contract Service' provided by them, whereas as per recent judgement dated 19.02.2018 passed by the Hon'ble Supreme Court of India, value of the goods supplied on FOC basis should not be included in the taxable value of the service, for the purpose of-computation of service tax liability. Now they have computed their correct Service Tax liability by way of excluding value of the goods supplied on FOC basis and after inclusion of some RA Bills, which inadvertently could not be considered last time. Thus the revised Service Tax liability of M/s Shree Dhama Infrastructure (P) Ltd. for the period from April, 2013 to June, 2017 now comes to Rs. 88,01,399/-, out of which they have discharged ST liability of Rs. 2,00,000/-;

- *During the period April, 2013 onwards, the party have provided Works Contract Service for residential projects of M/s Sikka Infrastructure (P) Ltd., M/s SVP Builders India Ltd. and M/s Deepsons India (P) Ltd.;*
- *His company had never purchased Cement and Steels, whereas various other items such as Concrete, Sand, Bricks, Electricity/Plumbing goods, Binding wires, wood/ply, nut & bolt, iron pipe/net & Diesel etc. were purchased by them for its use in providing Works Contract Services to various parties;*
- *It is evident from the copies of RA Bills provided by them that M/s Sikka Infrastructure (P) Ltd., had recovered value of the Cement & Steels supplied on FOC basis from them;*
- *Due to lack of awareness of Service Tax laws, Service Tax on the value of the goods supplied by M/s Sikka Infrastructure (P) Ltd. on FOC basis was charged, but M/s Sikka Infrastructure (P) Ltd. had never paid to them Service Tax on such FOC supplied goods, as evident from the tendered copy of the Ledger Account maintained by M/s Sikka Infrastructure (P) Ltd. In respect of M/s Shree Dhama Infrastructure (P) Ltd. for the period April, 2012 to March, 2018 (RUD-8);*

- *His company issued RA Bills to the concerned builders, but the amount charged in the RA Bills was always reduced by the builders while finalizing RA Bills. Still complete amount is yet to be paid by the builders. He has already provided copies of some invoices issued by them and some RA Bills finalized by the Builders (RUD-9) vide his letter dated 19.12.2017;*
- *They have summary of RA Bills finalized by the builders, on the basis of which he has produced Summary of Party-wise Bills (RUD-6A).*
- *His company had not filed their ST-3 returns for the period relevant from April, 2013 to June, 2017;*
- *As regards tendering of copies of only three RA Bills No. 08 to 10 out of total 15 RA Bills concerned to M/s SVP Builders India Ltd., he stated that they do not have copies of rest of the finalized 12 RA Bills concerned to M/s SVP Builders India Ltd., but he tendered copy of a ledger account maintained by M/s SVP Builders India Ltd. in respect of M/s Shree Dhama Infrastructure (P) Ltd. for the period April, 2011 to March, 2018 (RUD-10). He also tendered copy of finalized RA Bill No. 19 concerned to M/s Sikka Infrastructure (P) Ltd. (RUD-1 1).*
- *As regard non-submission of copies of bills issued by them to the builders, he assured for submission of all bills issued to the builders w.e.f. April, 2013, within 02 days;*
- *As regards amount credited in their ledger account maintained by M/s Sikka Infrastructure (P) Ltd., against works related to 1st, 2nd and 3rd RA Bills (Non-tower), he stated that amount shown against such three RA Bills are already included in the provided copies of finalized RA Bills. However, he assured for submission of complete details in this regard within 02 days;*
- *As regard their Service Tax liability under Notification No. 30/2012-ST (Reverse Charge Mechanism), he stated that under this notification there is no Service Tax liability of the company, as during the course of*

provision of Work Contract Service, his company had never received services of Manpower Supply from any contractor or person; that their expenses shown under the head Direct Wages & Labour Contract in their balance sheets for the years 2013-14 to 2016-17, were indeed related to daily wages of temporary labourers deputed by the company and also concerned to the works related to carpentry, shuttering work cutting, binding, bending, brick work, fixing of doors/windows, laying of pipelines etc. got done through various contractors on payments agreed on the basis of measurement and number of works done. He also stated that security expenses shown in their balance sheets were related to services of Security Guards received for security of their running residential projects from the Limited/ Private Limited Security Service Agencies. Thus on Security_ Expenses also, no Service Tax liability was on their company Later he provided copy of an invoice issued by M/s Lakshay Group Securities (P) Ltd., Faridabad and a bill issued by M/s Blue Fox Security & Allied Services ([P) Ltd., Ghaziabad for evidencing provision of Security Services by above security agencies. Except these documents, he has not provided any other documents or details, as he undertook to furnish in his above statement dated 12.10.2018

9. And whereas, on scrutiny of the details/records furnished by the party or the records resumed during the search proceedings, it appears that the party have provided services of Work Contract to the following services recipients during the period 2013-14 to 2015-16 :-

1) *M/s Sikka Infrastructure (P) Ltd. for construction housing project at Sikka Karnam Greens, Sector - 143B, Noida*

2) *M/s S.V.P. Builders (India) Ltd. for construction of multistoried residential building at Gulmohar Gardens project, Raj Nagar Extn., Ghaziabad.*

3) M/s Deepsons India (P) Ltd. for construction of multistoried residential building at ' Atulya Height', Vaishali, Ghaziabad."

4.5 From the above it is quite evident that:-

- search at the premises of the respondent was conducted on 17.07.2015;
- Three statements of the respondent Managing Director were recorded on 20.07.2015, 29.07.2015 and 12.10.2015;
- Next statement of was recorded nearly after gap of one and half years on 13.01.2017;
- After taking note of the proceedings for earlier period the matter was transferred to jurisdictional Commissionerate in the month of October 2017. (Though it is stated that jurisdictional range officer was making correspondences with the respondent in the mean time no details of such correspondence has been stated in the show cause notice.)
- Jurisdictional officers there after issued summon to the respondent on 03.11.2017 and recorded the statement on 19.12.2017 when the respondent provided the documents in respect of the services provided during the period April 2013 to December 2015. (when various records available with the appellant were resumed during the search on 17.07.2015 what fresh documents were summoned is not stated)
- After nearly nine months summons dated 10.08.2018 and 26.09.2018 were issued to the respondent and the documents as called for were provided by the respondents vide letter dated 05.10.2018
- Another statement dated 12.10.2018 of the respondent was recorded on 12.10.2018.

The show cause notice was issued to the respondent on 23.10.2018.

4.6 From the facts noted as above it is evident that all the facts were in the knowledge of the Revenue officers in 2015 when the first show cause notice dated 23.01.2015 was issued. The search was conducted by the DGCEI officers on 17.07.2015 and three statements were recorded. Thereafter no action is taken for a long period of time and it is only on 13.01.2017 that next statement is recorded, after the adjudication of the said show cause notice on 29.03.2016. Thereafter DGCEI transfers the matter to the jurisdictional officers in month of October 2017 (nearly ten months after recording the statement). We do not find any justification in the matter to hold that the fact of nonpayment of service tax and non filing of the return was not in the knowledge of the DGCEI officers during this period, or the appellant had suppressed any facts while being investigated by the DGCEI.

4.7 From the investigation as carried on by the jurisdictional officers we find that there is no delay in furnishing the information when called for. The respondent appeared when called on summon and furnished the information as and when called. Further delay as is evident has occurred for the reason that after receipt of the file from DGCEI in October 2017 the jurisdictional officers recorded the first statement on 03.11.2017 and the next statement was recorded on 12.10.2018, against the summons issued 10.08.2018 and 26.09.2018.

4.8 Will the decisions relied upon by the Revenue help their case when knowingly the delay in investigation can be attributed to the Revenue officers. We do not find any merits in any submissions made in the appeal filed by Revenue with regards to the invocation of extended period of limitation.

4.9 As we do not find any merits in the Revenue appeal on the issue of limitation, in view of the decisions referred in the Revenue appeal, penalty under Section 78 could not have been imposed on the respondent and impugned order cannot be faulted on this account.

4.10 As we do not find any merits in the appeal filed by the Revenue, we are not rendering any finding on the other issues raised in the cross objections filed by the respondent.

5.1 Appeal filed by the Revenue is dismissed.

5.2 Cross objections are disposed off.

(Dictated and pronounced in open court)

Sd/-
(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

Sd/-
(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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