IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No. ST/70181/2015-ST[SM]

(Arising out of Order-in-Appeal No. MRT/EXCUS/000/APPEAL-I/191/2015-16 dated 28/08/2015 passed by Commissioner of Central Excise, Customs & Service Tax (Appeals-I), Meerut)

Principal Commissioner of Customs, Central Excise & Service Tax, Meerut **Appellant**

Vs.

M/s Hanuman Contractors & Engineers **Respondent**

Appearance:

Shri Gyanendra Kumar Tripathi AC/AR for Appellant
Absent on call for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)

Date of Hearing : 23/02/2018
Date of Decision : 23/02/2018

FINAL ORDER NO. 70760/2018

Per: Anil Choudhary

The issue in this appeal is whether the Commissioner (Appeals) have rightly held that the show cause notice was bad for invoking of extended period of limitation.

2. The brief facts are that the respondent-assessee is registered with the Service Tax Department for providing various services like manpower recruitment or supply agency, construction service – CICS, etc. The Revenue made certain enquiries from the service receivers who supplied the figures of payments made to the appellants during the period from

2008 – 09 to 2011 – 12. As such figures received from the service receivers appeared to be higher than the amount of taxable turnover declared in the ST-3 returns. It appeared to Revenue that the respondent have short paid the service tax and accordingly show cause notice was issued dated 23 October, 2013 for the period from 2008 – 09 to 2011 – 12 proposing to levy service tax short paid Rs.16,80,335/- with further proposal to impose penalty. The SCN was adjudicated on contest and the proposed demand confirmed alongwith equal amount of penalty under Section 78. Penalty was also imposed under Sections 76 and 77 of the Act.

3. Being aggrieved the appellant preferred appeal before learned Commissioner (Appeals) on the ground that some of their activities are covered under exempted services related to Agriculture and/or falling under Negative List. Their books of accounts and records were audited by EA – 2000 regularly. They are making full disclosure as noticed by the audit team, there being no suppression. Thus the demand invoking extended limitation is bad and not tenable. Further the Revenue failed to establish as to what amount has been treated as value of taxable service, neither service recipient wise nor financial year wise. The calculations made by Revenue are erroneous. In their reply to the SCN they have provided correct data as per the ST-3 returns but the Adjudicating Authority failed to consider them and summarily confirmed the SCN. Their activities also included sale of

Gobar – Khad. Further the Adjudicating Authority had failed to appreciate that during the period in question service tax payable was on receipt basis and not on bill raised basis. Whereas their income and expenditure account reveals that the same was maintained on billing basis and/or mercantile basis. Further during repeated EA audits regularly no error was pointed out. Thus classifying of the activities of the respondent-assessee in different class of services is totally baseless and erroneous and hence not sustainable in law. Further the Adjudicating Authority erred to appreciate that reimbursement of lunch and dinner expenses provided to the man power (by the appellant) of one of the service recipients does not attract service tax as related to agricultural activity

4. The learned Commissioner (Appeals) taking note of the grounds of appeal, considered the facts and circumstances, have found that in para-24(xx) of the Order-in-Original the Adjudicating Authority has taken cognizance of the appellant's submission is that "The Service tax officers had visited their premises and conducted audit of all the maintained records and invoices, etc. They submit that when the Department had perused each and every transaction and also had reported to the Department that due service tax was properly paid, then there is no legal and reasonable reason to discard the Service Tax Auditors reports which were made after actual physical verification of the records." Further pursuant to earlier audits as per the audit objection they

have deposited Rs.20,462/- on 31 March, 2008 and Rs.14,645/- on 11 January, 2011 and informed the Department. Accordingly held that the demand raised in the show cause notice is time barred and not tenable.

5. Being aggrieved the Revenue is in appeal before this Tribunal on the grounds that Section 9 of the General Clauses Act 1897 provides – in any Central Excise Act or regulation made after the commencement of this Act, it shall be sufficient for the purpose of excluding the first in the series of days of any other period of time to use the word from and for the purpose of including the last in the series of days or any other period of time, to use the word to. This section applies to all Central Acts made after 3 January, 1868 and to of regulations made after the 14th day of January, 1887. I find that this ground is not tenable as there are provisions in the Finance Act for the purpose of calculation of limitation. I also find that the learned Commissioner (Appeals) have found that certain material facts placed for consideration have not been considered by the Adjudicating Authority and the demand have been confirmed arbitrarily. The appellant had stated that they are paying service tax on receipt basis whereas the financial records are maintained on mercantile basis. The respondent had also contended that the turnover includes sale of Gobar-Khad which have been ignored and not considered by the Adjudicating Authority among other objections. Thus I find that the learned Commissioner

(Appeals) have set aside the Order-in-Original both on the ground of limitation and also finding the same to be non-speaking and cryptic.

6. Accordingly this appeal filed by Revenue is dismissed. The respondent-assessee shall be entitled to consequential benefits in accordance with law.

(Dictated and pronounced in Court)

Sd/-
(Anil Choudhary)
Member (Judicial)

Ankit