CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL ALLAHABAD

REGIONAL BENCH - COURT No. I

Service Tax Appeal No.86 of 2010-Division Bench

(Arising out of Order-in-Original No.56/Commissioner/LKO/2009 dated 30/09/2009 passed by Commissioner of Central Excise & Service Tax, Lucknow)

M/s Research Designs and

Standards Organization (RDSO) **.....Appellant**

(Manak Nagar, Lucknow-226011)

VERSUS

Commissioner of Central Excise

(Service Tax) Lucknow **....Respondent**

(7-A, Ashok Marg, Lucknow-226001)

APPEARANCE:

Request for Adjournment, for the Appellant
Shri Sandeep Kumar Singh, Authorised Representative for the Respondent

CORAM:

HON'BLE SMT. ARCHANA WADHWA, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO.- 71203 / 2019

Date of Hearing : 24 June, 2019
Date of Decision : 24 June, 2019

PER: ARCHANA WADHWA

On matter being called our attention stands drawn to the adjournment request made by the learned advocate. Further, we find that on the last date of hearing, a serious view was taken about an identical request made by the learned advocate and it was noticed that as the appeal is Nine years old, the said tactics adopted by the appellants are for delaying the proceedings cannot be appreciated. However, in the interest of justice and by way of last chance itself the matter was adjourned. Again appellants are unrepresented today and seek adjournment with which we do not agree and proceed to decide the appeal itself. Accordingly, we have heard learned A.R. appearing for the Revenue and have gone through the impugned order.

2. We note that the demand of service tax of Rs.8.54 crores approximately stands confirmed for period 01/04/2003 to 31/03/2008 by way of issuance of a show cause notice dated 17/10/2008 under the category of Scientific or Technical Consultancy Services as also others. The appellant had taken a categorical stands before the Authorities below that the appellant being a Research Designs and Standards Organization is a subordinate unit of Ministry of Railways, Government of India and established on 01/01/2003 as statutory body. They discharged their duties as technical advisor to the Ministry of Railways Government of India and being the sole R & D Organization Indian Railways, functions as technical advisor and consultant to the Railway Board, Zonal Railways and production units of Indian Railways. They assailed the impugned demand on merits by submitting that it is their sovereign duty to perform the said functions as also on the limitation aspect.

While dealing with the limitation, the Adjudicating Authority has observed that there was omission or failure on the part of the Noticee to furnish returns as also to disclose the fact of providing of services and as such it appears that the **noticee did so deliberately with intent to evade payment of service tax.** However, as regards penalty, he has extended the benefit under Section 80 to the appellant by observing as under:-

> *"I find that the Noticee is a Government body and was under a bona fide belief that they are not liable to pay service tax as they are performing the activities which comes within the purview of statutory functions and*

wherever any charges are collected from the non-railways organizations, the same are collected in due discharge of their activities in accordance with the procedure laid down by the Railway Board and the same are deposited with the Government treasury, and therefore, I do not find this a fit case for imposition of penalties as I find that there was a reasonable basis for the assessee's belief for non compliance of the tax laws in the matter and therefore I do not impose any penalty under powers vested under Section 80 of the Finance Act, 1994."

3. A cumulative reading of both the findings of the Commissioner i.e. on invocation of longer period of as also on non imposition of penalty reveal that the same are self-contradictory. Surprising while invoking the longer period of limitation, he has attributed deliberate suppression to the assessee whereas while extending the benefit of Section 80, he has observed that the appellant being a Government body was under a *bona fide* belief. We really fail to understand and appreciate the findings of the Adjudicating Authority. Admittedly the criteria for invocation of longer period of limitation as also for imposition of penalty is identical and once the Adjudicating Authority has arrived at a findings of non suppression as regards penalty, the same findings would be applicable for non invocation of longer period of limitation. It is also noted that the Revenue has not challenged the said part of the impugned order of Commissioner vide which he has not imposed any penalty upon the appellant.

In view of the above discussion, we hold that the demand beyond the period of limitation is barred and cannot be upheld. The same is accordingly set aside to that extent.

4. As regards the demand falling within the limitation period we hold that the appellant, after passing of the present impugned order had filed a Review Application before Chief Commissioner of Central Excise & Service Tax dated 19/11/2009

giving reference to some correspondence between Indian Railways and Ministry of Finance which application has been considered by the Chief Commissioner vide his letter dated 13/08/2009 and stand forwarded to the Central Board of Excise and Customs. No further development is available on the file. As such, we deem it fit to remand the matter to Adjudicating Authority for fresh decision of the appellant's liability of service tax in the light of the above Review Application as filed with subsequent recommendation by the Chief Commissioner, falling within the normal period of limitation. Appeal is disposed of in above terms.

(Dictated and pronounced in open court)

Sd/-
(Archana Wadhwa)
Member (Judicial)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

Lks