CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 3

Service Tax Appeal No. 796 of 2009

(Arising out of Order-in-Appeal No. 30/2009-ST dated 25.06.2009 passed by the Commissioner of Central Excise (Appeals – II), Bangalore.)

M/s. Kousik Cargo Pvt. Ltd.,
No. 390, III Floor, Mosey Manor,
Beside MSIL Building,
HAL Air Port Exit Road,
Bangalore - 560 017.
Karnataka.

Appellant

VERSUS

The Commissioner of Central Excise (Appeals-II)
No.16/1, 5th Floor, SP Complex,
Lalbagh road,
Bangalore – 560 027.

Respondent

APPEARANCE:

Shri Ram Sharma, Advocate for the Appellant.
Shri Rajesh Shastry, Superintendent (AR) for the Respondent.

CORAM:

HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order No. 20525 / 2025

DATE OF HEARING: 15.04.2025
DATE OF DECISION: 15.04.2025

PER : R. BHAGYA DEVI

This Appeal is filed by the Appellant M/s. Kousik Cargo Pvt. Ltd. against Order-in-Appeal No. 30/2009 dated 25.06.2009 passed by the Commissioner of Central Excise (Appeals – II), Bangalore.

2. Briefly the facts of the case are that the impugned order is a *de novo* order based on the Tribunal's remand order vide Final Order No. 1256/2008 dated 17.10.2008, wherein the Commissioner (Appeals) upheld the Order-in-Original No. 65/2007 dated 26.10.2007 confirming the service tax demand of Rs.2,40,266/-. Aggrieved by this order, the appellant is before this Tribunal.

3. The Learned Counsel at the outset submits that show-cause notice dated 30.06.2004 was issued demanding service tax amount of Rs.1,750/- on the value of Rs.35,000/- for the period 2001–02 to 2002-03, which was confirmed by the Original Authority vide Order-in-Original No. 60/2004 dated 24.07.2004 which had attained finality. On 27.02.2007 another show-cause notice was issued demanding service tax on differential value based on the balance sheet and the ST-3 returns for the year 2001-02 to 2004-05 which was confirmed by the Original Authority vide Order-in-Original No. 65/2007 dated 26.10.2007 and on appeal filed by the appellant, the Commissioner (Appeals) vide Stay Order No. 12/2008 dated 20.02.2008 dismissed their appeal for non-compliance. Aggrieved by this order, the appellant had filed an appeal before this Tribunal and this Tribunal vide Final Order No. 1256/2008 dated 17.10.2008 remanded the matter to the Commissioner (Appeals) to decide the issue on merits. It is the submission of the learned counsel that since the earlier show-cause notice was confirmed and attained the finality, the question of suppression does not arise. Relied on decision of this Tribunal in the case of **M/s. Rolex Logistics Pvt. Ltd. vs. Commissioner of Service Tax, Bangalore: 2009 (13) STR 147 (Tri.-Bang.)** wherein this Tribunal had held that the show-cause notice is based on balance sheet and other documents maintained by the party, therefore, the appellants have been regularly paying service tax and also

filed the required returns. Therefore, there is no evidence to show that they had suppressed the facts with an intention to evade payment of duty.

4. The learned Authorized Representative (AR) for the Revenue submits that the Commissioner (Appeals) had rightly upheld the order of the Original Authority on the ground that the appellant had not filed ST-3 returns and not declared the correct value based on the balance sheet.

5. Heard both sides. The impugned order is result of the Tribunal's Final Order No.1256/2008 dated 17.10.2008 wherein this Tribunal observed as follows:-

> "4. We have carefully considered the submissions. We notice that there is an earlier show-cause notice dated 30.06.2004 and earlier Order-in-Original No.60/2004 dated 24.07.2004 pertaining to the same period. Prima facie, there is force in the submission made by the appellant. In view of the earlier proceedings *prima facie* subsequent order appears to be time barred. ………. The impugned order of the Commissioner is set aside and matter remanded to Commissioner (Appeals) to hear the matter on merits without insisting on further deposit in the matter…….."

6. As seen from the records, the first Order-in-Original No. 60/2004 dated 24.07.2004 confirmed the demand of Rs. 1,750/- on the value of Rs.35,000/-, the Original Authority takes note of the fact that the appellant had paid service tax amount of Rs.1,750/- along with interest of Rs.591/- and observes that these amounts been suppressed at the time of filing the returns and accordingly, after appropriating the service tax amount along with the interest, imposes penalty under various Sections. This order had attained finality. Therefore, the question of re-opening assessment for the period 2001-02 and 2002-03 does not arise. For the period 2003-04 and 2004-05, it is an admitted fact that the

appellant has filed the service tax returns and the demand is only on account of the differential value in comparison with the balance sheets of the appellant. Since, the first show-cause notice already invoked suppression and confirmed the demand, the question of invoking suppression once again based on the balance sheets does not arise. The impugned order confirming the demand on the ground of non-filing of earlier returns for the period 2001-03 cannot be justified since this issue had already attained the finality. This Tribunal in the case of **Commissioner of Service Tax, Delhi – III vs. Globe Civil Projects Pvt. Ltd.: 2025 (28) Centax 240 (Tri. -Delhi)** dated 03.03.2025 held that when the respondent was maintaining all the records and reflecting the same in the books of accounts and also in the balance sheets, the demand based on the records of the respondent's data cannot be alleged as suppression. In the present case, since the appellant was already issued with the show-cause notice invoking suppression, the question of invoking suppression on the same issue based on the balance sheets does not arise. In view of the above the demand entirely being time barred, is set aside.

7. Appeal is allowed with consequential relief, if any, in accordance with law.

(Operative portion of the order was pronounced in open court on conclusion of hearing.)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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