

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

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REGIONAL BENCH – COURT NO. 1

**Appeal No.ST/60390/2020-Ex**

[Arising out of OIA No.CHD-EXCUS-001-APP-2520-2018-19 dt.4.3.2020 passed by the Commissioner (Appeals) of CGST, CR Building, Plot No.19, Sector17C, Chandigarh]

**M/s.Maharaja Crane Services**

(Shop No.10, Industrial Area, Sector26, Chandigarh)

**: Appellant (s)**

Vs

**Commissioner of CGST, Chandigarh**

(CR Building, Plot No.19, Sector17C, Chandigarh]

**:Respondent (s)**

APPEARANCE:

Shri Om Prakash, Advocate for the Appellants

Shri Piyush Yadav, Authorised Representative for the Respondent

**CORAM : HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)**

Date of Hearing:16.03.2021

Date of Decision:19.03.2021

**FINAL ORDER No.60565/2021**

**Per :Ashok Jindal**

The appellant is in appeal against the impugned order demanding service tax of Rs.6,67,103/- for the period from 1.7.2012 to 31.3.2013 by way of show cause notice issued on 6.4.2018.

2. The facts of the case are that the appellant is engaged in the manufacture of tangible goods service. Enquiries were initiated by the Central Excise & Service Tax Officers, Chandigarh by calling information vide letter dated 4.8.2016 in which the appellant cooperated and submitted required documents. During enquiry, the

appellant, as advised by the officers, also deposited Rs.6,52,838/- on eight different dates between 29.9.2016 and 31.3.2017 as per the availability of funds. A show cause notice was issued on 6.4.2018 under section 73 of the Finance Act, 1994 for demand of service tax amounting to Rs.27,31,156/- pertaining to the period 1.7.2012 to 31.3.2013 by invoking the extended period of limitation.

2. The appellant contested the case on various grounds including the one that the demand for the period 1.7.2012 to 31.3.2013 was even beyond the maximum period of limitation of five years provided under proviso to Section 73 of the Act. The appellant also relied upon the order of the Commissioner (Appeals), Ludhiana, bearing No. LUD-EXCUS-001-APP-487-18 dated 01.3.2018 passed in the case of Aar Kay Industries, Mohali, holding that where a party was not registered, the relevant date for reckoning the limitation was when the tax was required to be paid.

3. The Assistant Commissioner adjudicated the case vide order dated 15.11.2018. He inter alia dropped the demand for the period 1.7.2012 to 31.3.2013 on the ground that it was beyond the maximum period of limitation of five years provided under section 73 of the Act.

4. The Commissioner, Central Excise & Service Tax, Chandigarh reviewed the order-in-original under section 84 of the Act on the ground that the appellant had admitted the liability during the enquiries and, therefore, according to section 18 of the Limitation Act, 1963, the demand was within time. Accordingly, the appeal was filed by the Department before the Commissioner, CGST (Appeals), Chandigarh.

5. The appellant filed cross objection to the appeal. It was argued and demonstrated before the Commissioner (Appeals) that the applicability of section 18 of the Limitation Act had not arisen out of the order-in-original and thus the review order was void. Further, it was submitted that the Limitation Act applies only to suits and other proceedings and for purposes connected therewith. And as per section 2(j) of the Limitation Act, the "period of limitation" means the period of limitation prescribed for any suit, appeal or application by the Schedule, and "prescribed period" means the period of limitation computed in accordance with the provisions of this Act. The Schedule to the Limitation Act has the reference only to suits of various natures, application and appeals and did not apply to the service tax matters. The recovery of service tax not levied or not paid or short levied or short paid or erroneously refunded was covered under section 73 of the Act. The Finance Act (Chapter V), 1994 is an independent code dealing with the matters relating to service tax including recovery thereof. Section 64 (3) of the Act lays down that the Act shall apply to taxable services provided on or after the commencement of this Chapter i.e. Chapter V of the Act. As defined in Section 65B (50) of the Act, "tax "means service tax leviable under the provisions of this Chapter (Chapter V of the Finance Act, 1994).

8. The ground taken in the review order that the appellant had admitted the liability which has been made the basis for the invocation of section 18 of the Limitation Act, is of no relevance. The appellant had deposited service tax during the investigations as directed by the officers, on various dates and, thereafter, informed the department about deposit. It does not change the legal provisions of section 73 of

the Act relating to recovery of service tax. This does not mean admission about the liability which is subject to legal grounds during the adjudication, much less any property or right contemplated by the Limitation Act. The liability of service tax was covered only by the Act of 1994 and not the Limitation Act and Commissioner (Appeals) confirmed the demand. Against the said order, the appellant is before me.

9. Ld. Counsel for the appellant submits that the Commissioner (Appeals) has observed that the appellant was required to obtain service tax registration and file the return. He further submits that the show cause notice has been issued on 6.4.2018 was even beyond the period of five years provided under section 73 of the Act. Therefore, no demand is sustainable against the appellant. The Commissioner (Appeals) has invoked section 18 of the Limitation Act applies to suits, appeals and applications. Section 18 of the Limitation Act refers to acknowledgement of liability in respect of property or right and thus the service tax is neither a property nor a right. It is a tax on the service provided as levied under the Finance Act, 1994. Therefore, the provisions of Limitation Act are not applicable to the facts of this case. Therefore, the impugned order is to be set aside.

10. On the other hand, Ld.AR reiterates the findings of the lower authorities.

11. Heard the parties.

12. The sole issue before is that whether for the period 1.7.2012 to 31.3.2013, the demand is sustainable by issuance of show cause notice dated 6.4.2018 or not?

13. In terms of section 73 of Finance Act, 1994, the demand can be raised within five years by invoking the extended period of limitation. Admittedly, in this case in hand, the show cause notice dated 6.4.2018 was issued for the period 1.7.2012 to 31.3.2013 which is beyond the period of five years for the said demand. The Commissioner (Appeals) has invoked the Limitation Act. The said provisions are not applicable to the facts of the present case. As the limitation prescribed for the matter is governed under section 73(1) of the Finance Act, 1994, therefore, the provisions of Finance Act, 1994 are applicable in the present case for limitation.

14 In the result, the impugned order is set aside and the appeal is allowed with consequential relief.

(Pronounced in the open Court on 19.03.2021)

**(Ashok Jindal)**  
Member (Judicial)

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