CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
CHENNAI

Application No.ST/Misc[CT]/41499/2017
Appeal No.ST/691/2010

[Arising out of Order-in-Original No.15/2010 dt. 167.06.2010 passed by Commissioner of Central Excise, Chennai-II]

A.P. Enterprises — Appellant

Versus

Commissioner of Central Excise, Chennai-II
[presently CGST & Central Excise,
Chennai South Commissinerate] — Respondent

Appearance :

Shri S. Muthuvenkatraman, Advocate
For the Appellant

Shri K. Veerabhadra Reddy, JC (AR)
For the Respondent

CORAM :

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of hearing / decision : 18.04.2018

FINAL ORDER No. 41198 / 2018

Per Archana Wadhwa

The miscellaneous application for change of cause title has been filed by the Revenue due to change in the jurisdiction of the appellant and change in address of the respondent. The present jurisdiction and address of the respondent is as follows:-

The Commissioner of GST & Central Excise,
Chennai South Commissionerate,
MHU Complex, 692, Anna Salai,
Nandanam, Chennai – 600 035.

Accordingly, the miscellaneous application is allowed and the jurisdiction and address of the respondent is changed from CCE, Chennai-II to The Commissioner of GST & Central Excise, Chennai South Commissionerate.

2. After hearing both sides, we find that the demand of service tax stands confirmed against the appellants under the category of "Survey and Exploration and Mineral Oil and Gas Service", for the period April 2006 to September 2007.

3. Ld. Advocate appearing for the appellants submits that an identical matter of the same assessee stands remanded earlier vide Order No.40527/2017 dt. 22.3.2017 for verification of their stand that the entire service tax already stands discharged by the principal contractor.

4. However, in the present case, he raises another issue of limitation by submitting that the period involved is April 2006 to September 2007 and the SCN stands dispatched on 23.10.2008. He submits that the Revenue was aware of the entire situation in as much as they had already issued a SCN on 23.1.2008 to them for the period

2004-06. As such, in view of the law declared by the Hon'ble Supreme Court in the case of *Nizam Sugar Factory Vs CCE A.P.* reported as 2006 (197) ELT 465 (SC), the Revenue is not entitled to raise the demands by invoking the longer period of limitation in as much as there can be no suppression of facts on the part of the assessee.

5. Countering the above stand of the assessee, Ld. A.R submits that SCN was very well within the period of limitation in as much as for the quarter April 2006 to September 2007, the assessee is required to file the return by 24.10.2007. That being the relevant date, the notice issued on 23.10.2008 is required to be considered as having been issued well within the period of limitation.

6. In as much as, admittedly, a part of the demand falls within the limitation period, for which purpose, the matter is required to be remanded in the light of the earlier order of the Tribunal in the assessee's own case, we leave it open to the adjudicating authority to decide the limitation aspect and thereafter decide the issue on merits. Appeal is thus allowed by way of remand.

(dictated and pronounced in court)

(Madhu Mohan Damodhar)
Member (Technical)

(Archana Wadhwa)
Member (Judicial)

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