IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI

Appeal No.: ST/00148/2012

(Arising out of Order-in-Appeal No. 55/2011 – STax. (SLM) dated 15.12.2011 passed by the Commissioner of Customs and Central Excise (Appeals), Salem.)

M/s. Visshu Constructions : Appellant

Vs.

Commissioner of Central Excise, : Respondent
Salem Commissionerate,
Salem

Appearance:-
Shri. S. Venkatachalam, Advocate
for the Appellant

Ms. T. Usha Devi, DC (AR)
for the Respondent

CORAM:
Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing/Decision:**04.09.2018**

Final Order No. 42373 / 2018

Per Bench :

Appellants are registered with the Service Tax Department under "Commercial and Industrial Construction Service". A Show Cause Notice dated 17.03.2011 was issued to them alleging that on verification of Income Tax TDS statement, the ST-3 return for the year 2007-08 revealed that there is a shortfall in accounting of value to the tune of Rs. 51,373/- out of which Rs. 34,373/- was included in the next ST-3 return and service tax paid along with interest. However, that appellants failed to pay the appropriate service tax for the balance amount of Rs. 17,000/- and for this the liability works out to Rs. 1,870/-.

2. They had undertaken projects to various clients and had availed abatement under Notification 1/2006-ST. Further verification revealed that appellants paid the service tax partly by cash and partly by utilizing the input service tax credit account. As per the Notification, the assessee can claim abatement only if they do not avail CENVAT Credit. Thus, the Department was of the view that the appellants are not eligible for the abatement. On the above allegation, Show Cause Notice demanded an amount of Rs. 1,870/- as short payment of service tax for the period 2007-08 and Rs. 3,33,298/- for the wrongly availed abatement as well as CENVAT Credit on input services. After due process of law, the Original Authority confirmed the demand along with interest and imposed penalties which was upheld by the Commissioner (Appeals). Hence, the appellant is now before the Tribunal.

3.1 On behalf of the appellant, Ld. Counsel Shri. S. Venkatachalam argued mainly on the ground of limitation. He adverted to para (e) of the appeal grounds and submitted that the appellants had paid the service tax involved on the amount charged by them for the services provided. However, in respect of extra works, there was an amount of Rs. 10,000/- for which the sub-contractor had paid the service tax, which the appellant herein passed on to their customer for reimbursement. It was only an accounting mistake and instead of furnishing the service provider bill to M/s. Indus Tower Limited Company, the appellants raised the bill mentioning the amount in actual and including his part of service. The said inadvertence led to adjustment by way of taking credit and debiting the same in the books of accounts for which the Department has alleged short payment of service tax.

3.2 He adverted to the ST-3 returns for the relevant period and submitted that the appellant had disclosed in the ST-3 returns that they are availing the benefit of abatement as per Notification 01/2006 and had also furnished the details with regard to CENVAT Credit availed. In column 5A and 5B, the appellants have given the details of the CENVAT Credit availed on service tax and Central Excise Duty. Thus, the entire details were disclosed to the

Department and the allegation that the appellants have suppressed facts with intention to evade payment of duty is without any factual basis. Apart from a bold allegation that the appellant has suppressed facts in order to evade payment of service tax, there is no iota of evidence to establish that the appellant has intentionally suppressed facts. It was all due to inadvertence in accounting. He therefore submitted that the entire demand is hit by limitation.

4. The Ld. AR Ms. T. Usha Devi supported the findings in the impugned Order. She submitted that in the ST-3 returns, the appellants have merely stated that they are availing the abatement as per the Notification No. 01/2006 and also stated the details of the credit. It has not been stated that it is the credit that is pertaining to the service tax paid by sub-contractor, etc. Therefore, the contention of the appellant that they have not suppressed any facts cannot sustain.

5. Heard both sides.

6. The Ld. Counsel has mainly argued on the ground of limitation. The period involved is from 2008-09 to 2009-2010. The Show Cause Notice is issued on 17.03.2011 invoking the extended period. On perusal of the ST-3 returns it is seen that the appellant

has disclosed that they are availing the benefit of Notification 01/2006. As per the Notification, the benefit would not be eligible if the assessee avails credit on inputs/input services. However, the appellant has availed credit on certain input services. The same has been disclosed by them in the ST-3 returns by Column 5B. Thus, the Department was put to knowledge and it cannot be said that the appellants had suppressed any facts from the Department with an intention to evade payment of service tax. When the appellants have disclosed the entire details and put to knowledge of the Department about the wrong credit availed, it cannot be said that they are guilty of suppression of facts. For the same reason, the extended period cannot be invoked.

7. We find that on facts presented before us, the demand is hit by limitation as there are no ingredients satisfying the invocation of extended period. The impugned Order is set aside on the ground of limitation.

8. The appeal is allowed with consequential reliefs, if any.

(Operative part of the order was pronounced in open Court)

(Madhu Mohan Damodhar) Member (Technical)

(Sulekha Beevi C.S.) Member (Judicial)

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