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

ST/00607/2011

[arising out of Order-in-Appeal No.115/2011 (M ST), dated 20.07.2011 passed by the Commissioner of Central Excise (Appeals), Chennai]

COMMISSIONER OF GST & CE, CHENNAI APPELLANT

Versus

M/s. WEISS ROHTING (I) PVT. LTD. RESPONDENT

Appearance:

For the Appellant	Ms. T. Ushadevi, DC (AR)
For the Respondent	None

CORAM:

Hon'be Smt. Sulekha Beevi C.S, Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of hearing/decision **29-03-2019**

FINAL ORDER NO. **40665 / 2019**

Per Bench:

Brief facts are that respondents were issued show-cause notice alleging short-payment of service tax under Business Auxiliary Services. After due process of law, the original authority confirmed the demand, interest and imposed penalties. In appeal, the Commissioner (Appeals) set aside the same on the ground of limitation. Aggrieved, the department is now before the Tribunal.

2. The learned Authorised Representative for the Revenue Ms. T. Ushadevi, DC (AR) appeared and argued on behalf of the department. She submitted that the decision of the Commissioner (Appeals) to set aside the Order-in-Original on the ground of limitation is not legal, proper or correct. The respondent has not disclosed relevant details to the department and this amounts to suppression of facts. The form of ST-3 return during the relevant period was not having separate column for declaring the non-taxable value is not an excuse on the part of the assessee to abstain from disclosing the facts of receipts/income to the department. The assessee has suppressed of facts with intention to evade payment of service tax. The Commissioner (Appeals), therefore, ought not to have set aside the demand on the ground of limitation.

3. None appeared on behalf of the respondent though repeated notices were issued. The matter was taken-up for disposal after hearing the learned Authorised Representative and also on perusal of records.

4. The demand is made in the show-cause notice in respect of the following:-

(i) Non-inclusion of transportation surplus and SE/BE processing charges in taxable value under CHA services for the period 2002-03 to 2005-06.

(ii) Non-payment of service tax on the amount received as Brokerage Commission by Air/Steamer and profit share from counterparts under Business Auxiliary Service for the period from 2003-04 to 2006-07 i.e., upto 31st March, 2007. In page no.6 of the impugned order, the Commissioner (Appeals) has discussed the reasons as to why the extended period cannot be invoked. Undisputedly, the respondents have been regularly filing their ST-3 returns. They have disclosed all the receipts in their returns. They have contended that there is no provision in the returns to declare all the components of the gross bill charges in the returns. This is, in fact, true. The department does not have a case that respondents have suppressed any receipts in the returns. The demand has been raised on the basis of the gross bill amounts observing that certain parts of these bills have not been included for discharging the service tax liability. The respondents have contended that these are profi share and also reimbursable expenses, which are not to be included in the total taxable value. Thus, when the ST-3 returns have regularly disclosed, the entire income received by them and also the books of accounts reflect the amounts as shown in the balance sheet, the Commissioner (Appeals) has rightly held that there is no suppression of facts with intention to evade payment of service tax. The relevant paragraph in the impugned order is reproduced as under:-

> "The appellants contended that the proviso to extended period of time cannot be invoked in the case as they have been file ST-3 returns regularly and that there is no provision in the return during the material time to declare all the components of the gross charges bill by them. I find that the lower adjudicating authority had raised this demand based on the profit & loss accounts, balance sheet etc., submitted by the appellant on being called for by the department. It is an undisputed fact that the receipts on which the demand were raised by the department were accounted properly by the appellant in their books of accounts and reflected in their balance sheet which is a public document. Inasmuch as, they have properly accounted the subject income/receipts in their books of accounts and submitted to the statutory audit, I hold that there cannot be any suppression of facts in the instant case and the proviso to extended period of time cannot be

> invoked. Thus, the demand in the instant case on both the issues is fully hit by limitation of time as the period w.e.f.01.20.2007 alone will survive. As a whole, demand is hit by limitation of time, I am inclined not to discuss the case on merits.”

5. From the perusal of records, we do not find any grounds to interfere with the above view taken by the Commissioner (Appeals). The appeal filed by the department is, therefore, dismissed.

(Dictated and pronounced in open court)

(MADHU MOHAN DAMODHAR)
MEMBER (TECHNICAL)

(SULEKHA BEEVI C.S)
MEMBER (JUDICIAL

ksr
12-04-2019

	DRAFT			Remarks
	I	II	III	
Date of dictation	29.03.2019			
Draft Order - Date of typing	12.04.2019			
Fair Order Typing	12.04.2019			
Date of number and date of dispatch	15.04.2019			