**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**

**SOUTH ZONAL BENCH**

**CHENNAI**

**ST/466/2009**

(Arising out of Order-in-Appeal No.94/2008 (M-ST) dated 29.12.2008 passed by the Commissioner of Central Excise (Appeals), Chennai)

M/s.Universal Aviation Services Pvt. Ltd — Appellant

Vs

Commissioner of Central Excise, Chennai — Respondent

Appearance

Ms.Minchu Punnoose, Advocate — For the Appellant
Shri.K.P.Muralidharan, AC (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 : **08.08.2017**

**FINAL ORDER No.** 41660/2017

**Per Bench**

The appellants are registered with Service Tax Department under the category of Manpower Recruitment Agency Services, Security Agency and Clearing Services. They entered into an agreement with Jet Airways for

Customs, Excise & Service Tax Appellate Tribunal rendering certain ground services. On perusal of documents, the department was of the view that appellants are liable to discharge service tax on cargo handling services and also have short paid service tax on Manpower Recruitment Services as they have not included the reimbursable expenses of bonus, etc in the taxable value of services. A Show Cause Notice was issued and after due process of law, the original authority confirmed demand of Rs.15,22,508/- alongwith interest, but however dropped the penalties, invoking Section 80 of the Finance Act, 1994. Commissioner (Appeals) upheld the same. Hence this appeal.

2. At the time of hearing, the Ld.Counsel Ms.Minchoo Mariam submitted that the appellant had already discharged a sum of Rs.10,17,937/- towards cargo handling services. That the remaining amount pertains to the reimbursable expenses in regard to the Man Power Recruitment Services. She adverted to the Order-in-Original and submitted that the original authority has not given the breakup of the amount confirmed under each category of services and therefore there is no quantification of each service by the department. She strongly argued on the ground of limitation and submitted that the original authority had found that there was no fraud on the part of the appellant and the non-payment was to the legal doubt on the issue of levy of tax. This being so the demand raised invoking extended period is not sustainable.

3. The Ld.AR strongly defended the findings in the impugned order. He submitted that the appellants have suppressed facts and therefore the demand raised invoking extended period is well founded.

4. Heard both sides.

5. The Ld.Counsel has pointed out that the adjudicating authority has not given the breakup of the service tax under each category which is true. The appellant / assessee has to be put to notice the amount confirmed under each category so that they are able to defend their case in appeal and also to help comply with the order. It has to be said that the entire details for raising the demand has been furnished by appellant. There is no specific fact/act of suppression brought out from records. Though there is general allegation of suppression in the Show Cause Notice it is not supported by any evidence. Moreover in para 18.7 of the impugned order, the adjudicating authority has categorically held that there is no fraud on the part of appellant in not paying the service tax. These being the facts, the demand raised invoking extended period is unsustainable. We therefore hold that demand is time barred. The appellant succeeds on the ground of limitation. The appeal is allowed with consequential reliefs, if any.

(Operative portion of the order was pronounced in open court)

Sulekha Beevi C.S.

**(Madhu Mohan Damodhar)**
Member (Technical)

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

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Customs, Excise & Service Tax Appellate Tribunal

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चेन्नै / Chennai