CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH COURT NO.IV

Service Tax Appeal No. 50899 / 2021

[Arising out of Order-In-Appeal No. RPR-EXCUS-000-APP-076-20-21 dated 18.02.2021 passed by the Commissioner (Appeals) CGST, Raipur (CG)]

M/s. Bodhan Singh Yadav **APPELLANT**
Dengrapara, Post Korba]
Balod (CG)

Vs.

COMMISSIONER (APPEALS), CGST **RESPONDENT**
Central Excise & CUSTOMS
GST Bhawan, Tikrapara,
Raipur (CG)

APPEARANCE:

Shri Naresh Pratap Chand, Advocate for the Appellant
Shri Mahesh Bhardwaj, Authorised Representative for the Department

CORAM:

HON'BLE MRS RACHNA GUPTA, MEMBER (JUDICIAL)

DATE OF HEARING/ DECISION: December 14, 2021

FINAL ORDER No. 52106 /2021

PER RACHNA GUPTA

The appellant herein is engaged in providing taxable service on work contract of civil work like concrete and other miscellaneous works being awarded by M/s. Gannon Dunkerley and Co. Ltd. On the basis of data available with the Department, it was observed that the appellant has received an amount of Rs 51,14,456/- towards the provisions of said services from their service receiver but have not paid the Service Tax on such taxable receipts amounting to Rs 6,322,147/- during the period of 2013-14. Accordingly vide Show Cause Notice No. 4611 dated 12.10.2018 aforesaid amount of Service Tax was proposed to be recovered from the appellant along with the interest and proportionate penalties. The said proposal was rejected by the Original Adjudication Authority vide the order No. 97/2019-20 dated 11.3.2020 holding that the law does not discriminate between the contractor and sub contractor in so far as the Service Tax liability is concerned. The appeal against this order as filed by the Department has been allowed vide Order-in-Appeal No. 76/20-21 dated 18.2.2021 holding that the receiver has provided the 'work contract service' to M/s. Gannon Dunkerley and Co. Ltd. However the service provider, the present appellant was held liable for benefit of Notification No. 30/2012 dated 20.6.2012. Being aggrieved of the said order, the appeal is filed before this Tribunal raising the sole ground of impugned Show Cause Notice to be barred by time.

2. I have heard Shri Naresh Pratap Chand, learned Counsel appearing for the appellant and Shri Mahesh Bhardwaj, learned Authorised Representative appearing for the Department.

3. Learned Counsel for the appellant has mentioned that during the financial year 2013-14 the services of 'work contract' were provided to M/s. Gannon Dunkerley and Co. Ltd. Hyderabad on sub contract basis against the consideration of Rs. 51,14,456/-. It is mentioned that on said consideration the main contractor had discharged the due Service Tax liability. Letter of the company dated 13.2.2019 has been impressed upon and as far as the impugned Show Cause Notice is concerned, it is mentioned that Show Cause Notice dated 10.2.2018 covers the period from 1.04.2013 to 31.03.2014. The Show Cause Notice could have been issued for the said period during one and a half year only i.e. up to 25.10.2015 but the impugned Show Cause Notice has been

issued in the 2018 invoking the extended period of 5 years. It is submitted that the extended period cannot be invoked in the present case because there is no wilful intention of the appellant for avoiding payment of Service Tax. There was confusion in the industry about the liability of sub contractor during the period in dispute. Said contravention / confusion has been settled by the decision of Larger Bench of this Tribunal in the case of **CCE vs. Melange Developer Pvt. Ltd.** reported as **[2020 33 GSTL 116 (Tri-LB)]** making sub contractor individually liable for the payment. In the present case that there is non payment by the appellant as sub contractor but the impugned Service Tax liability stand already discharged and the amount received already stand deposited with the Government by the main contractor. It is therefore submitted that the demand is alleged to have been wrongly invoked by extending period of limitation. Order under challenge is accordingly prayed to be set aside. The appeal is prayed to be allowed.

4. Per contra learned Departmental Representative has laid emphasis upon the Order in Appeal itself which has been passed based on settled law about the liability of the contractor being separate from liability of the sub contractor to discharge the Service Tax. It is submitted that the Commissioner (Appeals) has been reasonable while extending the benefit of Notification dated 20.6.2012 to the appellant. There is no infirmity in the order with respect to invoking the extended period of limitation. Learned Departmental Representative has not expressed any submission. However, appeal is prayed to be dismissed.

5. After hearing both the sides it is held as follows:

There is no dispute about the fact that the amount of Service Tax for the amount of consideration received by the appellant stand already paid with the Government exchequer, however by the main contractor M/s. Gannon Dunkerley and Co. Ltd. There is also no denial to the fact that during the period there were several pronouncements made not only by this Tribunal but even by the departmental adjudicating authority holding that the sub-contractor is not liable to pay the Service Tax when the main contractor has paid the said Service Tax. Till the order in which the impugned Show Cause Notices has been issued similar was the scenario. Few of such decisions are in the case of

1 **M/s. Abed Ali Malda, VS Asstt Commissioner,CGST, Malda Division, WB [OIA No. 325/SLG-ST/2018-19 dated 5.3.2019];**

2. **DNS Contractor vs. CCE Delhi 2015 (51) GSTL 636];**

3. **Murari Lal Singhal vs CCE & ST, Jaipur [2019 (25) GSTL 45 (Tri-Del)];**

4**. Thadi Satya Ramalinga Reddy vs. CCE Visakapatnam II [2017 (4) GSTL 421]**

7. I also observe that it was the decision of Larger Bench of this Tribunal in the case of **CCE vs. Melange Developer Pvt. Ltd.** reported as **[2020 33 GSTL 116 (Tri-LB)]** that the aforesaid decisions have been altered to the fact that the sub contractor being an individual service provider that to the main contractor but is liable to discharge the Service Tax liability to the extent of amount of service being provided by him to the main contractor. All the above decisions and the prevalent contradiction stand cleared by final judgement of Larger Bench. In view of this, and the facts of the case are sufficient to hold that there was no clarity about the individual liability of the sub contractor towards the payment of service tax. Even the Department was not clear on the interpretation of the circulars issued, judgements made and practice followed on sub contractors liability. As such in the case where the main contractor had discharged the Service Tax on entire value of service. These findings are sufficient for me to hold that

there cannot be any intentional conduct of the appellant to not to pay the service tax during 2013-14. Alleging fraud mis-statement or suppression of facts upon the appellant in view of above prevalent situation is opined to be definite error on part of the Adjudicating Authority below. The onus was otherwise on the Department to prove that short payment of service tax has been made with intent to evade such payment. Apparently and admittedly in the present case the service tax stands already paid with respect to the amount involved in the present appeal, i.e. the amount of consideration received by the appellant/ sub contractor for providing 'works contract services' to main Contractor M/s. Gannon Dunkerley & Co. Ltd. The question of any positive evidence proving evasion does not at all arise. Hence there arises the occasion for invoking the extended period of limitation. I draw my support from the decision in the case of **Savira Industries vs. CCE, Chennai** reported as **[2016 (331) ELT 504 (Tri-Chennai)]** wherein it was held that where the assessee was under the bonafide belief of his no liability towards service tax or there are divergent views of the Courts on the issue, extended period of limitation can not be invoked. The entire demand in such a case gets hit by limitation. In view of the entire above discussion, the impugned show cause notice is held to be barred by limitation, any question of sustenance of any demand raised by said show cause notice do not survive. Order under challenge is accordingly, set aside. Appeal stands allowed.

(RACHNA GUPTA)
MEMBER (JUDICIAL)

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