CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL NEW DELHI.

PRINCIPAL BENCH

SERVICE TAX APPEAL NO. 55170 OF 2023 (SM)

[Arising out of the Order-in-Appeal No. RPR/EXCUS/000/APP/243-22-23 dated 17/03/2023 passed by The Commissioner (Appeals), Central GST & Central Excise, Raipur (C.G.).]

M/s Chopra Construction, **Appellant**
Choprapara, Ambikapur,
(C.G.) – 497 001.

VERSUS

Commissioner (Appeals), **Respondent**
Central GST & Central Excise,
GST Bhawan, Tikrapara,
Raipur (C.G.).

APPEARANCE

Shri Varun Gaba, Advocate – for the appellant.
Shri Rohit Issar, Authorized Representative (DR) – for the Department

CORAM : **HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)**

FINAL ORDER NO. 50018/2024

DATE OF HEARING : 02.01.2024

ASHOK JINDAL

The appellant is in appeal against the impugned order wherein demand of service tax under the category of works contract service has been confirmed against the appellant.

2. The facts of the case are that the appellant is engaged in the activity of construction services i.e. construction, maintenance and repair, erection and commissioning services. During the period 2016-2017 on the basis of Form 26AS obtained

from the Income Tax Department, it was found that appellant is providing the services of construction under works contract services, therefore, investigation was conducted and on the basis of investigation, a show cause notice on 12.10.2021 was issued for the period of April 2016 to March 2017. The matter was contested by the appellant on merits as well as on limitation, but both the authorities confirmed the demand raised in the show cause notice along with interest and penalties were also imposed. Against the said order the appellant is before me.

3. Learned counsel for the appellant submits that on the same issue for the earlier period 2012-2016, a show cause notice dated 28.10.2016 was issued to the appellant, which was adjudicated on 25.03.2019, but the show cause notice in this case has been issued on 12.10.2021, the same is highly time barred. He relied on the decision of Hon'ble Supreme Court in the case of **Nizam Sugar Factory** versus **Collector of Central Excise, A.P.**[1]

4. On the other hand, learned authorized representative opposed the contention of the appellant and submitted that in this case investigation was started on the basis of Form 26AS obtained from the Income Tax Department and appellant did not cooperate during the course of investigation, therefore, extended period of limitation was invokable in the facts and circumstances of the case.

5. Heard both sides and considered the submissions.

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1. 2008 (9) S.T.R. 314 (S.C.)

6. I find that in this case initially a show cause notice was issued to deny the benefit of exemption under Notification No. 25/2012-ST dated 20.06.2012 for the period 2012-2016 on 28.10.2016 and the said matter was decided by the Adjudicating Authority on 25.03.2019 holding that appellant is not entitled for the benefit of the said notification. In that circumstances, if at all, any show cause notice is required to be issued, the same was required to be issued within one year from the date of adjudication i.e. from the date of 25.03.2019 for the impugned period, but in this case the show cause notice has been issued on 12.10.2021, which is highly time barred.

7. In view of the above discussion, the impugned show cause notice issued to the appellant is barred by limitation. Accordingly, the same is set aside. Hence, no demand, interest and penalty is sustainable against the appellant. Consequently no demand, interest and penalty is imposable on the appellant.

8. In view of this, I set aside the impugned order and allow the appeal with consequential relief to the appellant.

(Dictated and pronounced in open court.)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

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