CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
New Delhi
PRINCIPAL BENCH
E-HEARING
Service Tax Appeal No. 54750 Of 2023

[Arising out of Order-in-appeal No. 150(AK)ST/JDR/2021 dated 27.12.2022 passed by the Commissioner of Central Excise & Central Goods and Service Tax, Rajasthan]

JAGDISH KUMAR SAIN **Appellant (s)**
Prop of M/s Ganesh Construction
Company, 7-A-44, Jawahar Nagar
Ganganagar, Rajasthan-335001

Vs

COMMISSIONER OF CENTRAL GST AND
CENTRAL EXCISE-JODHPUR **Respondent (s)**
G-105, New Industrial Area,
OPP. Diesel Shed, Jodhpur
Rajasthan-342003

APPEARANCE:
Shri M B Maheshwari, Advocate for the Appellant
Shri Manish Kumar Chawda, Authorized Representative for the Respondent

CORAM :
HON'BLE MR. SOMESH ARORA, MEMBER (JUDICIAL)

FINAL ORDER No. 59391/2024

Date of Hearing: 10.10.2024
Date of Decision: 10.10.2024

SOMESH ARORA

In the instant matter, the appellant Mr. Jagdish Proprietor of concern M/s Balaji Builders and M/s Ganesh Construction Company during the impugned period that is October 2014 to June 2017 was working as sub-contractor. Both these concerns were working as the sub-contractor through contractor to do work for DMRC which was a unit exempted as working for the Government. The appellant claimed that they were entitled to exemption as they were working as a sub-contractor for contractor, who was inturn entitled to exemption for the Government. The matter was examined on various issues by the Learned Commissioner (Appeals) in the impugned Order and benefits on certain counts were allowed. However, on the point of claim of exemption by the appellant he held that while providing services for the year 2016-17 through M/s Balaji Builders and M/s Ganesh Construction Company, contrary figures from the ones placed on record were given and therefore due to lack of evidence the Commissioner (Appeals) did not allow the benefit. The learned Counsel for the appellant pleads before this court that the department has wrongly mentioned the figures and therefore there was no contradiction as far as the appellant is concerned as stated by Commissioner (Appeals). The benefit between M/s Spark Geo which was working for DMRC the benefit was similarly disallowed for the period 2014-15 and 2015-16 on the ground of non- production of underlying agreement between M/s Spark Geo, which was the main contractor and M/s DMRC. Similarly he disallowed benefit of cum- duty benefit on the ground of lack of evidence and extended period and simultaneously the penalties for suppression etc were invoked. It was the submission of the learned Counsel that he has placed on record, certain agreements between M/s Spark Geo and DMRC at this stage before this court and can also provide the remaining agreements. He stated that he will be able to convince on the basis of evidence the learned Commissioner (Appeals) about the availability of evidence as well as on the point that no extended period of limitation needed to be invoked as the Show Cause Notice in this matter for the period October 2014 to June 2017 was given on 28.09.2020. The learned Authorized Representative submits that the evidence has been brought on record for the first time and therefore the same needs to be considered by the Appellate Authority i.e. Commissioner (Appeals). Considered the respective submissions, from the stated position and records it appears that certain evidences produced need a fresh look by the Commissioner (Appeals). Matter is therefore remanded to Commissioner (Appeals) to consider the evidences regarding agreement as well as stated position of no contradiction in figures which is sought to be explained by the learned Counsel for the appellant. The learned Counsel is also free to produce other evidences of remaining contracts and also the submission that there was no extended period invokable. Matter is remanded to Commissioner (Appeals). Appeals is allowed by way of remand.

(Order dictated and pronounced in the open Court)

(SOMESH ARORA)
MEMBER (JUDICIAL)

PRIYA.