IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-DB

COURT –III

Service Tax Appeal No.ST/59061/2013-ST [DB]

[Arising out of Order-in-Appeal No.112(ST)/RPR-I/2013 dated 11.06.2013 passed by the Commissioner (Appeals), Central Excise & Customs, Raipur]

M/s.Hira Cement …Appellant

Vs.

C.C.E. & S.T. Raipur … Respondent

Present for the Appellant : Mr.Bhism Ahluwalia, C.A.
Mr. Krishna Menon, Advocate
Present for the Respondent: Mr.Ranjan Khanna, D.R.

Coram: HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. B.RAVICHANDRAN, MEMBER (TECHNICAL)

Date of Hearing/Decision: 04/01/2017

FINAL ORDER NO. __50192/2017__

PER: B.RAVICHANDRAN

The appeal is against the order dated 11.06.2013 of Commissioner (Appeals) –I, Raipur. The appellant are engaged in the manufacture of cement and clinker liable to Central Excise Duty. The dispute in the present case relates to their activity of acting as intermediary for their sister concern Hira Industries Ltd. in connection with crushing up ore of another person. They had one transaction as intermediary in the year 2005 and received consideration for the same from their sister concern.

2. The Revenue entertained a view that the said activity will amount to promotion of business and covered under the taxable entry of "business auxiliary service" during the material time. Accordingly, proceedings were initiated which resulted in confirmation of the amount of Rs.8,26,190/-. Penalties were also imposed under Section 76 & 78 of the Finance Act, 1998. On appeal, vide the impugned order, the Commissioner (Appeals) upheld the Original Order except for setting aside penalty under Section 76.

3. The ld. Counsel for the appellant submitted that they had no arrangement for promotion of business of their sister concern. However, in one transaction they acted as intermediary in 2005 for arranging crushing work by the sister concern for a client. They received consideration for the said activity. However, the same cannot be considered as promotion or marketing of service, provided by the client. They have not involved in such activity on a regular basis. The tax liability now is with reference to a single activity in 2005. The receipt of consideration on such activity has been captured in all their records and reflected in the balance sheet. The ld. Counsel contested the demand on merit and time bar. Regarding time bar he stated that they have maintained all the records which reflected that transaction and the receipt of said consideration. In fact, the Revenue has raised the demand after four years of conducting audit, only based on the records maintained by the appellant. He referred to the decision of the

Tribunal in Hira Ferro Alloys Ltd, Unit-II - 2016 TIOL- 2520 – CESTAT –Del. He emphasized that in similar situation the Tribunal held against the demand for extended period.

4. The ld. AR reiterates the findings of the lower authority. He submitted that the appellant is an established assessee and the service tax liability under BAS is well known and the plea of bonafide belief cannot be accepted in the facts of the present case. The appellant did not make any efforts to get registered or get the matter clarified by the competent authority.

5. We have heard both the sides and perused the appeal records. We find that the impugned order confirmed the service tax liability on the activity of the appellant as intermediary under the category of sub-clause (ii) and (iv) of BAS. These provisions deal with promotion or marketing of services provided by the client and procurement of goods or services which are inputs for the client. We find, the sub-clause (iv) has no application to the facts of the present case regarding promotion and marketing of service. Though, there is no written agreement, it is apparent that the activity of the appellant promoted the services rendered by their sister concern. This much is clear from the nature of consideration received by the appellant, which is categorized as liaisoning charges in P & L account. However, we find the allegation of fraud suppression and willful misstatement cannot be sustained in the facts of the present case for one of transaction carried out by the appellant during the year, 2005. In the similar set

of facts, the Tribunal held in Hira Ferro Alloys Ltd., Unit-II (supra) that extended period of demand cannot be sustained. The demand has been raised based on the statutory records maintained by the appellants. As such, we find the demand for extended period is not sustainable in the present case. Accordingly, the appeal is allowed only on the question of time bar.

[Dictated and pronounced in the open Court)

(B. RAVICHANDRAN) **MEMBER (TECHNICAL)**	**(S.K. MOHANTY)** **MEMBER (JUDICIAL)**

Anita