IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. III

Service Tax Appeal No. ST/1881/2012-ST[DB]
[Arising out of Order-In-Appeal No. 63(AKJ) ST/JPR-I/2012 dated 11.04.2012 passed by CCE Jaipur-I]

For approval and signature:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon’ble Mr. B. Ravichandran, Member (Technical)

1	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3	Whether Their Lordships wish to see the fair copy of the Order?	
4	Whether Order is to be circulated to the Departmental authorities?	

M/s. Nosh Enterprises ...Appellant

Vs.

C.C.E. Jaipur-I …Respondent

Appearance:
Ms. Rinki Arora (Advocate) for the Appellant
Mr. Govind Dixit, DR for the Respondent

CORAM:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon’ble Mr. B. Ravichandran, Member (Technical)

Date of Hearing/Decision.19.12.2016

Final Order No. 56409 /2016

Per S. K. Mohanty:

Inclusion of reimbursable expenses in the taxable value for the computation of service tax liability is the subject matter of present dispute before the Tribunal.

2. The appellant is not contesting the service tax demand confirmed by the authorities below. However, the submissions of

the appellant are that the proceedings initiated for confirmation of the service tax demand is barred by limitation of time inasmuch as the period involved in this case is from 2005 - 2006 to July 2008; whereas, the show cause notice was issued on 19/08/2010, which is beyond the stipulated time of one year prescribed under Section 73 of the Finance Act, 1994.

3. The Ld. Advocate appearing for the appellant submits that the issue as to whether reimbursable expenses should be included in the value of taxable service for levy of service tax was debatable and there were divergent views of different judicial forums. She also submits that Rule 5 (1) of Service Tax Valuation Rules, 2006 was declared as ultravirus by the Hon'ble Delhi High Court in the case of Intercontinental Consultants & Technocrats Pvt. Ltd. versus UOI reported in 2013 (29) STR 9 Delhi. Further, she also relies on the decision of this Tribunal in the case of Scott Wilson Kirkpatrick India (Pvt.) Ltd. vs CCE, Jaipur, 2013 (30) STR 652 (Tri. Del) to state that in an identical situation, the Tribunal has allowed the appeal on the ground of limitation.

4. On the other hand the Ld. AR appearing for the respondent reiterates the findings recorded in the impugned order.

5. Heard both sides and perused the records.

6. We find that the dispute arising out of interpretation of sub-rule (1) of Rule 5 (ibid) (supra) has not yet attained finality and that non-payment of service tax on the reimbursable expenses can be construed as a reasonable cause on the part of the

appellant. Thus, charges of suppression, willful mis-statement etc. with intent to evade payment of tax cannot be leveled against the appellant. Since the SCN was issued after one year from the relevant date, we are of the view that the demand cannot be sustained on the ground of limitation. We find support from the decision cited by Ld. Advocate in the case of Scott Wilson (Supra), wherein this Tribunal in an identical situation, has allowed the appeal on the ground of limitation.

7. In view of the above, after setting aside the impugned order, we allow the appeal in favour of the appellant on the ground of limitation alone, without going with the merits of the case.

(Dictated and pronounced in the open court)

(**B. Ravichandran**)
Member(Technical)

(**S. K. Mohanty**)
Member (Judicial)

Neha