

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi**

COURT NO. III

DATE OF HEARING : 08/03/2017.
DATE OF DECISION : 08/03/2017.

**Service Tax Appeal No. 1261 of 2011 with C.O. No. 44 of
2012**

[Arising out of the Order-in-Appeal No. 136/ST/DLH/2011 dated 10/05/2011 passed by The Commissioner, Central Excise (Appeals), New Delhi.]

CST, Delhi

Appellant

Versus

M/s Star Estate Management Ltd.

Respondent

Appearance

Shri Sanjay Jain, Authorized Representative (DR) – for the appellant.

Shri Kapil Vaish, C.A. – for the Respondent.

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

Final Order No. 52302/2017 Dated : 08/03/2017

Per. B. Ravichandran :-

The Revenue is in appeal against order dated 10/05/2011 of Commissioner (Appeals), Delhi – I. There is a cross-objection filed by the respondent also in this case. Both are taken up together for disposal. M/s Star Estate Management Ltd. are engaged in managing and maintaining properties of M/s Ansal Properties and Industries Ltd. The dispute in the present case

relates to non-payment of service tax on certain consideration received by respondents/assessee. These mainly relate to amounts received as parking fee from the users of parking space in the property and amounts received as renovation charges from various occupants of the property as and when certain renovation are carried out by any of the occupants of the property. The Original Authority upheld the service tax liability on the respondent for the period 2005-2006 and 2006-2007. On appeal, the Commissioner (Appeals) mainly set aside the order on the ground of time bar. He observed that in the absence of specific contrary evidence the tax liability of the respondent/assessee is confirmed.

2. The Revenue is in appeal against the finding of Commissioner (Appeals) regarding time bar. The learned AR elaborated the grounds of appeal and submitted that the reason given by the learned Commissioner on time bar is legally not sustainable. He recorded that the audit of the accounts of respondent/assessee was conducted in August 2007 and the show cause notice was issued invoking extended period after 1½ years of the audit. Hence he held the demand is hit by time bar. He relied on decision of Tribunal in **Bellary Iron & Ores Pvt. Ltd. vs. CCE, Belgaum** reported in **2010 (18) S.T.R. 406 (Tri. – Bang.)** to state that extended period demand cannot be issued based on audit objection. He also relied on decision of Tribunal in **Aditya College of Competitive Exam. Vs. CCE, Visakhapatnam** reported in **2009 (16) S.T.R. 154 (Tri. –**

Bang.)). It is the submission of the learned AR that the Commissioner (Appeals) erred while applying the legal provisions of Section 73 (1). The time period for issuing demand is based on "relevant date" as defined in the said section. The knowledge of the Department is not a criteria to determine the period for issuing notice. He relied on the decision of the Hon'ble High Court of Gujarat **CCE, Surat – I vs. Neminath Fabrics Pvt. Ltd.** reported in **2010 (256) E.L.T. 369 (Guj.)**. In view of the incorrect appreciation of legal provision in the impugned order, the learned AR submitted that the same cannot be sustained.

3. The learned Counsel appearing for the respondent/ assessee stated that they have submitted all the required details before the original as well as appellate authority. The impugned order did not examine these documents and their defence before arriving at the conclusion on their tax liability. He submitted that, on merit, parking fee cannot be subjected to service tax. He relied on the decision of Hon'ble Delhi High Court in **Mahesh Sunny Enterprises P. Ltd. vs. CST, New Delhi** reported in **2014 (34) S.T.R. 21 (Del.)**. Regarding the renovation charges collected by the respondent/assessee from the occupants of the property, the learned Counsel submitted that these amounts are towards extra consumption of water and electricity that might be involved in renovation activity. The said amount is collected on lump-sum basis, as per the rate pre-fixed. These are not for providing any specific service.

4. We have heard both the sides and perused the appeal records. On the appeal filed by the Revenue, we note that the Commissioner (Appeals) has erred in recording the reason for time bar. He held the demand as time barred only on the ground that the show cause notice was issued after 1½ years of audit. We find no legal basis for such conclusion. The relevant date under Section 73 (1) of the Finance Act, 1994 is with reference to the date of filing return etc. The normal period or extended period is determined based on the provisions contained therein. If the ingredients for invoking demand for extended period are available, then such demand can be raised for 5 year period. The date of knowledge of the Department is not relevant in such situation. In this connection, we note the decision of Hon'ble Gujarat High Court in **Neminath Fabrics Pvt. Ltd.** (supra). The Hon'ble High Court held as below :-

"16. The termini from which the period of "one year" or "five years" has to be computed is the relevant date which has been defined in sub-section (3)(ii) of Section 11A of the Act. A plain reading of the said definition shows that the concept of knowledge by the departmental authority is entirely absent. Hence, if one imports such concept in sub-section (1) of Section 11A of the Act or the proviso thereunder it would tantamount to rewriting the statutory provision and no canon of interpretation permits such an exercise by any Court. If it is not open to the superior court to either add or substitute words in a statute such right cannot be available to a statutory Tribunal.

17. The proviso cannot be read to mean that because there is knowledge the suppression which stands

established disappears. Similarly the concept of reasonable period of limitation which is sought to be read into the provision by some of the orders of the Tribunal also cannot be permitted in law when the statute itself has provided for a fixed period of limitation. It is equally well settled that it is not open to the Court while reading a provision to either rewrite the period of limitation or curtail the prescribed period of limitation.

18. The Proviso comes into play only when suppression etc. is established or stands admitted. It would differ from a case where fraud, etc. are merely alleged and are disputed by an assessee. Hence, by no stretch of imagination the concept of knowledge can be read into the provisions because that would tantamount to rendering the defined term "relevant date" nugatory and such an interpretation is not permissible".

The said ratio has been followed in various decisions of the Tribunal. In **L'Oreal India Pvt. Ltd. vs. CCE, Pune – I** reported in **2015 (330) E.L.T. 253 (Tri. – Mumbai)** it is held :-

"5.11 Reliance is placed on the decision of the Hon'ble Gujarat High Court in the case of *Neminath Fabrics Pvt. Ltd.* [2011-TIOL-10-HC-AHM-CX = 2010 (256) [E.L.T.](#) 369 (Guj.)] and the Larger Bench decision in *Union Quality Plastic Ltd.* [2013-TIOL-1072-CESTAT-AHM-LB = 2013 (294) [E.L.T.](#) 222 (Tri.-LB)] wherein it has been held that knowledge and awareness of the department is not a relevant factor for invocation of extended period of time. In these decisions, it was ruled that whenever there is non-levy or short-levy of duty with an intention to evade payment of duty or any of the circumstances enumerated in the proviso to Section 11A(1) of the Central Excise Act, such suppression or wilful omission is either admitted or

demonstrated, invocation of the extended period of limitation would be justified”.

Hon’ble Supreme Court in **Mathania Fabrics vs. CCE, Jaipur** reported in **2008 (221) E.L.T. 481 (S.C.)** held that the limitation of five years period has to be reckoned backward from the date of show cause notice. Reference can also be made to the decision of the Tribunal in **Tejas Networks India Ltd. vs. CCE (ST), Pondicherry** reported in **2014 (302) E.L.T. 80 (Tri.-Chennai)** as affirmed by Hon’ble Supreme Court – **2015 (316) E.L.T. A157 (S.C.)**.

5. In view of the above legal position, we find that the finding of the Commissioner (Appeals) on time bar is not sustainable as the reasons cited is not legally tenable. Here, we note that the learned Counsel for the respondent/assessee submitted that they have a strong case to submit on the question of time bar on fact and on legal principle. This, he states, without reference to reason recorded by Commissioner (Appeals).

6. Regarding the merits of the demand, we note that the impugned order did not give categorical finding after examining the documents and evidence submitted by the respondent/assessee. It is necessary to give a clear finding regarding the nature of activity undertaken by the respondent/assessee, the consideration received for such activity which is liable to service tax. The Revenue contended that the respondent/assessee is engaged in managing and maintaining a immovable property and

consideration is received by way of parking fee. The respondent/assessee contends that they are only rendering service of allowing parking and collecting parking fee for such service. The management maintenance of common area is already subjected to tax. It is argued that parking fee cannot be brought under the category. This requires examination of all relevant documents for a decision. Since the decision of Commissioner (Appeals) on time bar is found to be not legally tenable, this issue also requires fresh consideration.

7. Considering the above discussion and finding, we hold that the impugned order cannot be sustained and accordingly set aside the same. The case is remanded back to Commissioner (Appeals) who will examine both on merit as well as on time bar to decide case afresh. Adequate opportunity should be provided to the respondent/assessee to submit their side of the case. We note here that we have not passed any order on merit or on time bar in the present case. All issues are kept open for taking a fresh decision. The appeal by Revenue is allowed by way of remand. The Cross Objection also is disposed of.

(Order dictated and pronounced in open court.)

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

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