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

Appeal No. ST/1241/2010-CU(DB)

[Arising out of Order-in-Appeal No. 05/Commr/ST/IND/2010 dated 04.03.2010 (Appeals), by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Indore].

For approval and signature:
Hon'ble Shri S.K. Mohanty, Member (Judicial)
Hon'ble Shri 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?	No
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?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

Shri Ashok Kumar Pathak ....**Applicants**

Vs.

C.C.E. Indore ....**Respondent**

Appearance:

Shri Ravi Holani, Advocate for the Applicants
Shri Ranjan Khanna, DR for the Respondent

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

Date of Hearing: 07.12.2016

FINAL ORDER NO. 56464/2016-CU(DB)

Per S.K. Mohanty:

This appeal is directed against the impugned order dated 03.03.2010 passed by Commissioner of Customs and Central Excise Indore, wherein service tax demand of Rs.18,86,488/- was confirmed along with interest against the assessee besides penalty under various sections of the Finance Act, 1994, were imposed on the appellant.

2. The taxable services in dispute is "man power recruitment and supply agency services" which was brought into the taxing net w.e.f. 16.06.2005. During the period 16.06.2005 to 30.04.2006, the "Commercial Concern" was only liable to pay the tax. However, the said phrase was amended w.e.f. 01.05.2006 providing for "any person" engaged in providing such services shall be liable to pay the tax.

3. In this case, the appellant is a provider of such taxable services who got itself registered with the service tax department on 22.02.2006 and filed the requisite return w.e.f. April 2006.

4. The Ld. Counsel appearing for the appellant submits that the appellant is not disputing its liability from 01.05.2006. However, the appellant's contention is that during the period 16.06.2005 to 30.04.2006 the "commercial concern" was only liable to pay the tax and the appellant in the capacity of an individual cannot be made liable for payment of such tax. Thus, for the period 16.06.2005 to 30.04.2006 the appellant is not liable to pay any tax and the demand confirmed against the appellant is barred by limitation. To support this stand that the proceedings initiated by the Department for the period 16.06.2005 to 01.05.2006 is barred by limitation of time, the Ld. Advocate has relied on the order dated 30.04.2009 passed by the Commissioner of Customs, Central Excise and Service Tax, Indore in respect of another assessee, Shri Manish Goyal, wherein it has been held that the individual cannot be considered as a commercial concern. Thus Ld. Advocate entertained the bonafide belief that as an individual the appellant was outside

the scope of purview of payment of service tax for the period 16.06.2005 to 01.05.2006.

5. On the other hand, Ld. DR appearing for the respondent submits that the registration certificate for providing the taxable certificate was obtained by M/s. B.K. Enterprises is different, the appellant in this case should be considered as a Commercial Concern for the payment of service tax for the period 16.06.2005 to 30.04.2006.

6. We have heard both the sides and examined the records.

7. The service of "man power recruitment and supply agency services" was brought into the taxing net from 16.06.2005 providing for payment of tax by a commercial concern. The term Commercial concern was amended w.e.f. 01.05.2006 and in place "any person" was inserted. Whether any proprietary concern should be considered as Commercial concern or not was a matter of dispute and there were different views expressed by different authorities. Considering the ambiguity in such definition clause, necessary amendment took place therein on 01.05.2006 replacing the term commercial concern with any person. Thus for the period 01.05.2006 onwards the appellant is statutorily liable to pay service tax. However, since the issue with regard to consideration of a person to commercial concern was not free from doubt, we are of the view that there was reasonable cause for the appellant for non-payment of tax for the said period. Thus the show cause notice issued to the appellant to deposit the tax from 01.05.2006 to 30.04.2006, in our opinion is barred by limitation of time. The appellant is not contesting the tax liability with effect from

01.05.2006. Thus the demand for the said period confirmed in the adjudication order cannot be sustained. However, since any person was incorporated in the definition of man power and recruitment supply agency w.e.f. 01.05.2006 the appellant is under the statutory obligation to pay the tax from the said date. The same is not contested.

8. In view of the above, the appeal is partly allowed to the extent of setting aside the impugned order confirming the duty demand for the period 16.06.2005 to 30.04.2006. For computation of service tax liability for the period from 01.05.2006 the matter is remanded to the original adjudicating authority. The original adjudicating authority shall afford opportunity for personal hearing to the appellant for explaining its case especially the facts regarding the cum duty benefit claimed. The appeal is disposed of in above terms.

[Dictated & Pronounced in the open Court]

(B. Ravichandran)
Member (Technical)

(S.K. Mohanty)
Member (Judicial)

Bhanu