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

Service Tax Appeal No. ST/50529/2014-[DB]
[Arising out of Order-In-Appeal No. JAI/EXCUS-002-APP-297-2013 dated 24.10.2013 passed by Commissioner (Appeals-II) Jaipur]

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

M/s. Jagdish Chandra Malviya ...Appellant

Vs.

C.C.E. & S.T., Jaipur-II …Respondent

Appearance:
Mr. Prashant Srivastava appeared for the Appellant
Mr. Sanjay Jain (DR) for the Respondent

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

Date of Hearing/Decision.05.06.2017

Final Order No. 54114 /2017

Per S.K. Mohanty:

The appellant provides commercial or industrial construction service and construction of residential complex service. During the disputed period 2006-2007 to 2008-2009, the appellant did not pay service tax. Accordingly, proceedings were initiated for recovery of the service tax amount of Rs. 4,86,251/- for providing the above services. Adjudication order passed in this regard was appealed against before the Commissioner (Appeals), which was disposed of vide the impugned order dated 18.10.2013.

2. Ld. Advocate appearing for the appellant submits that the principal contractor, who has engaged the appellant as the sub-contractor had already discharged the Service Tax liability in respect of the work done by

the appellant and thus, further tax cannot be demanded from the appellant since the same will amount to double taxation. He further submits that the SCN dated 28.05.2011 issued by the Department for confirming the service tax demand for the period 2006-2007 to 2008-2009 is barred by limitation of time, having been issued beyond the normal period prescribed under Section 73 of the Finance Act, 1994.

3. On the other hand, the Ld. DR appearing for the Revenue reiterates the findings recorded in the impugned order.

4. We find that the issue regarding payment of service tax by the sub-contractor, when the tax was deposited by the principal contractor was highly contentious. The Board vide its Circular dated 17.10.1998 has also clarified that when the principal contractor has paid the service tax, there is no requirement for the sub-contractor to pay such tax. However, the said Circular issued by the CBEC was subsequently modified. Thus, in this case, suppression, fraud etc. cannot be leveled against the appellant for invoking the extended period of limitation. Therefore, the impugned order is set aside and the appeal is allowed in favour of the appellant on the ground of limitation alone.

(Dictated and pronounced in the open court)

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

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

Neha