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/58782/2013-CU [DB]

[Arising out of Order-in-Appeal No.55 (VC)ST/JPR-I/2013 passed by the Commissioner (Appeals), Customs & Central Excise Jaipur-I]

M/s. Katta Trading Co. …Appellant

Vs.

C.C.E. , Jaipur … Respondent

Present for the Appellant : Mr.Jatin Mahajan, Advocate
Present for the Respondent: Ms.Neha Garg, D.R
Mr. Sanjay Jain, D.R.

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

Date of Hearing/Decision:26/05/2017

FINAL ORDER NO. 55076/2017

PER: S.K. MOHANTY

This appeal is directed against the impugned order dated 31.05.2013 passed by the Commissioner of Customs and Central Excise (Appeals-I), Jaipur.

2. Brief facts of the case are that the appellant is a service provider, engaged in providing Forward Contract Service, for which it is registered with the Service Tax Department. During the course of audit, it was observed by the Service Tax

Department that the appellant had also charged "transaction fee" from its client in addition to brokerage charges during the period from 01.04.2005 to 31.08.2006. Since the appellant did not pay service tax on the said transaction charges, the Department initiated proceedings against the appellant, seeking confirmation of the service tax demand. The adjudicating authority vide order dated 03.03.2011 has confirmed service tax demand of Rs.4,37,426/- alongwith interest and also imposed penalties under Section 76 and 78 of the Finance Act, 1994. In appeal, the ld. Commissioner (Appeals) has confirmed the adjudicated demand.

3. The ld. Advocate appearing for the appellant submits that the transaction fee/turn-over charges are in the nature of re-imbursement and since the appellant after collecting the same from its client had deposited the said charges with the Commodity Exchange, it cannot be said that Service Tax is liable to be paid on such charges by the appellant. He further submits that the proceedings initiated in this case is barred by limitation of time, inasmuch as, the period of dispute is from 01.04.2005 to 31.08.2006; whereas, the show cause notice was issued by the Department on 30.01.2009, which is beyond the normal period of limitation. To support such stand, the ld. Advocate submits that the appellant maintained adequate records to show the receipt of charges/fees from the clients and subsequent payment of the same to the NCEDX. Thus, he

submits that the charges of suppression, mis-statement etc. cannot be levelled against the appellant, justifying invocation of the extended period of limitation. The ld. Advocate has relied on the decision of this Tribunal in the case of LSE Securities Ltd. vs. Commissioner of Central Excise, Ludhiana – 2013 (29) STR 591 (Tri. - Del.) to state that demand cannot be sustained on the ground of limitation.

4. On the other hand, the ld. D.R. appearing for the respondent reiterates the findings recorded in the impugned order.

5. Heard both sides and perused the records.

6. On perusal of the impugned order, we find that the appellant has not produced any plausible evidence to show that the transaction charges cannot be included in the gross value. Further, it has also not produced Circular or Instructions issued by the NCEDX with regard to the application of the stock broker to collect a specified percentage as transaction charges on their credit value from the clients and pass the same to the respective stock exchanges. Further, we also find that from September 2006 onwards, the appellant had deposited the Service Tax attributable to transaction charges collected from its client. Thus, we are of the view that collection of

transaction charges should form part of the gross value under Section 67 ibid for the purpose of payment of Service Tax.

7. However, we find that the fact of collection of transaction charges by the appellant from its clients and payment of the same to the Stock Exchange were known to the Department much before issuance of the show cause notice. Further, the appellant had also reflected the payment particulars in the Ledger Account maintained by it during the relevant period. Thus, the show cause notice should have been issued within one year from the relevant date, seeking confirmation of the adjudged demand. In the present case, since the show cause notice was issued on 28.01.2009 for recovery of Service Tax demand from 01.04.2005 to 31.08.2006, we are of the view that the same is clearly barred by limitation of time inasmuch as, there is no element of suppression, mis-statement etc. in the case of the appellant for defrauding the Government revenue.

8. Therefore, the impugned order is set aside and the appeal is allowed in favour of the appellant on the ground of limitation only.

[Operative part pronounced in the open Court)

(V.PADMANABHAN)
MEMBER (TECHNICAL)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Anita