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

Date of Hearing/Order : 25.10.2017

Appeal No. ST/1764/2011-DB

(Arising out of Order-in-Appeal No. 410-411/CB/ST/JPR-II/11 dated 9.9.2011 passed by the Commissioner (Appeals), Customs & Central Excise, Jaipur)

M/s Shree Ram Carrier — Appellant

Vs.

CCE, Jaipur-II — Respondent

Appearance

Shri O.P. Agarwal, C.A. - for the appellant

Shri Ranjan Khanna, A.R. - for the respondent

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

Final Order No. 57703/2017

Per S.K. Mohanty :

This appeal is directed against the impugned order dated 9.9.2011 passed by Commissioner, Customs & Central Excise, Jaipur, upholding the service tax demand under GTA service.

2. The ld. Consultant appearing for the appellant submits that the proceedings initiated by the department is barred by limitation of time inasmuch as the period involved in this case is from 2006-2007, whereas show cause notice was issued on 23.12.2009, which is beyond the normal period from the relevant date. He further

submits that neither the show cause notice nor the adjudication order has discussed involvement of the appellant in the fraudulent activities, concerning non-payment of tax due to reason of suppression, fraud, collusion etc. To support such stand, the ld. Consultant has relied on the judgement of Hon'ble Madras High Court in the case of ***CCE, Salem Vs. Salem Co-Operative Sugar Mills Ltd.*** - 2014 (35) STR 450 (Mad.).

3. On the other hand, ld. DR appearing for the respondent reiterated the findings recorded in the impugned order.

4. Heard both the sides and perused the case records.

5. The issue involved in the present case relates to interpretation of the exemption benefit provided under Notification No. 34/2004-ST dated 3.12.2004. Since the Notification worded 'individual consignment' for consideration of the gross amount, there were confusions with regard to interpretation of the said phrase, whether to be considered as Singular or Plural in number. Therefore, under such circumstances of the case, non- payment of service tax within the stipulated time frame by the appellant can be considered as a reasonable cause. In the present case, admittedly, the show cause notice was issued beyond the normal period prescribed under

Section 73 of the Finance Act, 1994. Since the department has not specifically alleged or brought out any evidence regarding the involvement of the appellant in fraudulent activities for defrauding the govt. revenue, we are of the view that the extended period of limitation cannot be invoked for confirmation of adjudged demand. We find that in identical set of facts, the Hon'ble Madras High Court in the case of ***Salem Co-Operative Sugar Mills Ltd.*** (supra) has set aside the service tax demand on the ground of limitation.

6. Therefore, respectfully following the judgment of Hon'ble Madras High Court, we set aside the impugned order passed by the Commissioner (Appeals). Accordingly, the appeal filed by the appellant is allowed on the ground of limitation.

(Dictated & pronounced in open Court)

(B. Ravichandran) Member (Technical)	(S.K. Mohanty) Member (Judicial)

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