IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing/Decision:07.11.2017

Service Tax Appeal No.51591/2014-DB

[Arising out of Order-in-Appeal No.BPL-EXCUS-000/Appl-148-13-14 dated 5.12.2013 passed by the Commissioner (Appeals), Central Excise & Service Tax, Bhopal]

M/s.R.K. Enterprises Prop. Rahut Khan Appellant

Vs.

CCE, Bhopal Respondent

Appearance:

Rep. by Shri Himanshu Khemuka, Advocate for the appellant.
Rep. by Shri Ranjan Khanna, DR for the respondent.

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

Final Order No.57795/2017

Per B. Ravichandran:

The appeal is against order dated 5.12.2013 of Commissioner (Appeals), Bhopal. The appellants are engaged in providing commercial construction service liable to service tax. Proceedings were initiated against the appellant to demand and recover service tax through show cause notice dated 15.10.2009. The same was adjudicated by the Original Authority on 12.06.2012. Aggrieved by the original order, the Revenue preferred appeal before the Commissioner (Appeals).

2. Ld. Counsel for the appellant submitted that the impugned order passed by the Commissioner (Appeals) is not legally sustainable inasmuch as the appeal by the Revenue was preferred beyond the limitation provided under the Section 85 of the Act. He produced a copy of the review order, which is dated 14.09.2012 and the Commissioner also signed the review order on 14.09.2012. It is the submission

of the ld. Counsel that in terms of the amendment carried out by Finance Act, 2012 in Section 85 of the Finance Act, 1994, an appeal shall be filed within two months, which can be extended by another one month on showing sufficient cause. In the present case, the ld. Counsel submitted that the appeal is filed even beyond the condonable time limit.

3. We have heard both the sides and examined the appeal records.

4. Admittedly, the issue of limitation was not discussed in the impugned order before proceeding with the merits of the case. Ld. Counsel submitted that they have pleaded on limitation before the First Appellate Authority. We find that this is a basic legal issue, which will affect the very maintainability of the appeal and a finding on this issue is required to be recorded by the First Appellate Authority. Thereafter in case the appeal is filed in time or a condonation is considered within the permissible time, then only the Commissioner (Appeals) can proceed with the merits of the case.

5. In view of the above discussion, we set aside the impugned order and remand the matter back to the Commissioner (Appeals) for a fresh decision. Adequate opportunity shall be provided to the appellant to present their side of the case before a decision is taken.

[Order dictated & pronounced in open court]

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

Ckp.