IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-SM

COURT –IV

Service Tax Appeal No.ST/51183/2017 [SM]

[Arising out of Order-in-Appeal No.DDN/EXCUS/ 000/ APPL-I/03/2017-18 dated 06-04-2017 passed by the Commissioner (Appeals-I), Central Excise, Meerut]

M/s.Sangam Radio & Electric Works ...Appellant

Vs.

C.C.E. & S.T., Dehradun ... Respondent

Present for the Appellant : Mr.Vivek K. Pawar, CA
Present for the Respondent: Mr.K. Poddar, D.R.

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

Date of Hearing : 14/11/2017
Pronounced on : 24/11/2017

FINAL ORDER NO. 58068/2017

PER: S.K. MOHANTY

This appeal is directed against the impugned order dated 06.04.2017 passed by the Commissioner (Appeals), Central Excise, Meerut.

2. The appellant is a service provider under the taxable category of manpower recruitment and supply agency service. In respect of the taxable services provided during the period 2004-06, the appellant had deposited the Service Tax into the

Government Exchequer during the month of August, 2008 and September, 2008. While conducting audit of records of the appellant, the Central Excise Officers observed that the appellant was required to pay interest under Section 75 of the Finance Act, 1994 for delayed payment of Service tax. Accordingly, a show cause notice dated 27.04.2015 was issued to the appellant, seeking confirmation of the interest demand and also for imposition of penalty under Section 76 ibid. The show cause notice was adjudicated vide order dated 28.04.2016, wherein interest demand of Rs.4,60,318/- was confirmed and penalty under Section 76 was imposed on the appellant. The ld. Commissioner (Appeals) has upheld the adjudged demand.

3. The ld. A.R. appearing for the appellant submits that as per the requirement of Section 73 ibid, show cause notice was required to be issued within the stipulated time frame of 1/5 years from the relevant date. Thus, he submits that since the show cause notice was issued after a lapse of more than 6 years from the date of payment of Service Tax by the appellant, the same is not maintainable and accordingly, the adjudged demand confirmed by the authorities below cannot be sustained. To support the stand that show cause notice, seeking recovery of interest amount and for imposition of penalty should be issued within the stipulated time frame and not beyond, the ld. AR has relied on the judgment of Hon'ble Delhi High Court in the case of Hindustan Insecticides Ltd. –

2013 (297) ELT 332 (Del.), Kwality Ice Cream Co. - 2012 (281) ELT 507 (Del.) and the decision of this Tribunal in the case of Canara Bank – 2016 (45) STR 2014 (Tri.-Bang.), Bharat Aluminium Co. Ltd. – 2016 (342) ELT 404 (Tri.-Del.), Niranjan Decoflocks Pvt. Ltd. – 2015 (337) ELT 351 (Tri.-Del.) and Paper Products Ltd. – 2015 (327) ELT 326 (Tri. Mum.).

4. On the other hand, the ld. D.R. appearing for the Revenue reiterates the findings recorded in the impugned order and further submits that since interest is compensatory in character and the same is payable in the case of delay in payment of the principal amount i.e. Service Tax, interest liability is automatic and there was no requirement of issuance of any show cause notice for recovery of the said amount. Thus, he submits that the time limit prescribed in Section 73 ibid will not have any application for recovery of the interest amount. To support such stand, the ld. DR has relied on the judgment of Hon'ble Supreme Court in the case of Toyota Kriloskar – 2015 (324) ELT 636 (S.C.) and also the decision of this Tribunal in the case of Bayer ABS Ltd. -2012 (281) ELT 296 (Tri. Admd.).

5. Heard both sides and perused the case records.

6. The short question involved in this appeal for consideration by the Tribunal is whether the time limit provided under Section 73 ibid is applicable for issuance of show cause

notice, in case of confirmation of interest demand for late payment of the amount of service tax.

7. Section 73 ibid mandates that show cause notice in the case of normal period should be issued within one year and for the extended period, same should be issued within 5 years from the relevant date. No such recovery provisions exist separately in the Service Tax statute, in context with the demand of interest amount for delayed payment of Service Tax.

8. I find that while endorsing the views of the Tribunal, the Hon'ble Supreme Court in the case of M/s. T.V.S. Whirpool – 2000 (119) ELT A 177 (S.C.) have ruled that "it is only reasonable that the period of limitation that applies to claim for the principle amount should also apply to the claim for interest thereon". Since the law is well settled that the show cause proceedings should be initiated within the period of limitation provided under the statute, which in this case, is Section 73 ibid, the statutory time limit has to be strictly adhered to by the Department for recovery of the interest amount and for imposition of penalty. In this case, admittedly, the show cause notice was issued beyond the period of 5 years from the date of payment of Service Tax and filing of periodical returns by the appellant. Therefore, as per the principle laid down by the Hon'ble Supreme Court in M/s.T.V.S. Whirpool Ltd. (Supra) and other decisions cited by the ld. A.R. for the appellant,

such show cause notice issued by the Department, seeking recovery of the interest amount and for imposition of penalty will not stand for judicial scrutiny. The judgments relied on by ld. D.R. are distinguishable from the facts of the present case, inasmuch as, time limit for issuance of show cause notice was not the subject matter of dispute in those decided cases.

8. Therefore, I do not find any merits in the impugned order in confirming the interest demand and for imposition of penalty against the appellant. Accordingly, after setting aside the same, the appeal filed by the applicant is allowed.

[Pronounced in the Open Court on 24/11/2017]

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Anita