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

Date of Hearing/Decision:17.01.2018

Service Tax Appeals Nos.1832/2011 and 31/2012

[Arising out of Order-in-Appeal No.438(DKV)ST/JPR-I/2011 dated 24.10.2011 in Appeal No.ST/1832/2011 and Order-in-Appeal No.357(DKV)ST/JPR-I/2011 dated 23.08.2011 in Appeal No.ST/31/2012 passed by the Commissioner (Appeals), Central Excise, Jaipur]

Ramesh Chand Maloo — Appellant
Maloo Finance and Investment Services

Vs.

CCE, Jaipur-I — Respondent

Appearance:
Rep. by Shri Kumar Vikram, Advocate for the appellant.
Rep. by Shri P. Juneja, AR for the respondent.

Coram: Hon'ble Shri Justice (Dr.) Satish Chandra, President
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Orders Nos.50237-50238/2018

Per B. Ravichandran:

These two appeals are against orders confirming service tax liability on the appellants under the category of "Business Auxiliary Service" for canvassing financial products of the Asset Management Company.

2. Ld. Counsel for the appellants, at the outset, raised the issue of limitation against the present proceedings in both the impugned orders. He submitted that with reference to impugned order dated 24.10.2011, the period covered is 1.7.2003 to 31.03.2005. The proceedings against the appellants on the same dispute, for the earlier period, was initiated by show cause notice dated 5.4.2006. Accordingly, the second show cause notice dated 26.06.2008 again cannot invoke extended period.

3. On the impugned order dated 23.08.2011 covering the period 1.7.2003 to 31.03.2005, show cause notice was issued on 26.06.2008. However, the same dispute was earlier agitated by issuing show cause notice dated 5.4.2006 covering the same period. As such, it is the submission of the ld. Counsel for the appellants that for the same dispute, covering the same period, subsequent show cause notice invoking extended period is not tenable in view of the decision of the Hon'ble Supreme Court in the case of **Nizam Sugar Factory – 2006 (197) ELT 465 (SC).**

4. Heard both the sides and perused the appeal record.

5. The appellants are not contesting the matter on merit. The main preliminary objection taken by them is regarding sustainability of the demand itself for the extended period. The whole of the demand is covering the extended period by invoking the proviso to Section 73(1). We note that the same dispute was earlier agitated by Revenue and as such, the subsequent show cause notice on same set of facts cannot be issued by invoking suppression, fraud, etc. The said ratio has been laid down by the Hon'ble Supreme Court in the case of **Nizam Sugar Factory (supra).** Accordingly, on this limited issue of demand for extended period, demands are not sustainable. We set aside the impugned orders and allow the appeals.

[Order dictated & pronounced in open court]

(Justice Dr. Satish Chandra)
President

(B. Ravichandran)
Member (Technical)

Ckp.