CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi

COURT –II

Date of hearing/ Decision: 04.07.2018

Appeal No. ST/3793/2012-DB
[Arising out of Order-in-Original No. 27/2012-ST-COMMISSIONER dated 29/08/2012 passed by Commissioner of Central Excise-JAIPUR-I (Appeal)]

G N Construction — Appellant

Vs.

C.C.E. & S.T.-Jaipur-I — Respondent

Appearance:
Ms Priyanka Goel, Advocate for the appellant
Sh. Sanjay Jain, DR for the Respondent

Coram:
Hon'ble Mr. V. Padmanabhan, Member (Technical)
Hon'ble Ms. Rachna Gupta, Member (Judicial)

Final Order No. 52527/2018

Per: V. Padmanabhan

1. The present appeal challenges the Order-in-Original No. 27/2012 dated 29/08/2012. The appellant is engaged in various construction activities. The Department scrutinized the accounts of the assessee and come to the conclusion that during the period 01/10/2004 – 30/05/2007, the appellant has failed to pay Service Tax on the entire activities carried out by them. Show Cause Notice dated 23/04/2010 was issued proposing the demand of Service Tax which was not paid. The matter was adjudicated by the Commissioner and with the issue of the impugned order in which the demand for Service Tax was ordered to the extent of Rs. 29,30,144/- along with interest and penalties leviable under various Sections of the Finance Act. It is also pertaining to record that the entire Service Tax amount demanded in the impugned order has already been

deposited by the appellant along with applicable interest even before the issue of show cause notice.

2. Challenging the impugned order, the Ld. Advocate on behalf of the appellant submitted that the demand for Service Tax has been raised for the period even beyond 5 years which is beyond the time limit in terms of Section 73 of the Finance Act, 1994. She also reiterated the grounds raised in appeal that since the entire Service Tax demanded has already been paid by the appellant along with applicable interest, even prior to issue of show cause notice, the Revenue should not have issued the show cause notice and hence there is no justification for imposition of penalties under various sections. Finally, she prayed that the penalties may be set aside.

3. We heard Shri Sanjay Jain, Ld. DR for the Revenue. He submitted that the lower Authority has justified invoking the extended period under Section 73. He also submitted that the demand which has been made in the Show Cause Notice is within the period allowed under Section 73 (Proviso). He further justified the impugned order.

4. After hearing both sides and perusal of record we note that the appellant has undertaken construction activity during the period of dispute. After going through the record of the appellant, the Adjudicating Authority has confirmed the total demand of Service Tax amounting to Rs 29,30,144/-. It is seen that the entire account of Service Tax has been paid along with applicable interest prior to Show Cause Notice. Consequently, we find no justification for imposition of penalty and we set aside the same by following the earlier decisions of the Tribunal as below:-

i. ***Commissioner of Central Excise, Customs & Service Tax V/s M/s Stumpp Schuele & Somappa Pvt. Ltd. 2018 (5) EMI 609 CESTAT, Bangalore.***
ii. ***M/s SRM Engineering Construction Ltd. V/s Commissioner of Service Tax, 2018 (2) TMI 321- CESTAT Chennai.***

5. In the result, we modify the impugned order only to the extent of setting aside the penalty. Appeal is allowed in the above terms.

(Order Dictated & pronounced in the open Court)

(Rachna Gupta)
Member (Judicial)

(V. Padmanabhan)
Member (Technical)

Rekha