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

Date of Hearing/Decision : 04/02/2019

Appeal No. ST/53301/2018-(SM)

(Arising out of Order-in-Appeal No. 260-AG-CE-JDR-2018 dated 15/05/2018 passed by the COMMISSIONER OF CGST & CENTRAL EXCISE-Udaipur)

GENERAL MANAGER TELECOM Appellant

Vs.

C E & ST-UDAIPUR Respondent

Appearance
Shri O P Agarwal, Advocate for the appellant

Smt. Tammana Alam, DR for the respondent

CORAM: **Hon'ble Sh. Ajay Sharma, Member (Judicial)**

Final Order No: 50174/2019

Per Ajay Sharma

This appeal has been filed from the impugned order dated 15.05.2018, passed by the Commissioner (Audit) CGST, Commissionerate, Jodhpur.

2. According to Ld. Counsel for the appellant the only dispute in this matter is about the interest and penalty, since the Service Tax has already been deposited by the appellant. He further submitted that though the Adjudicating Authority vide its Order-in-Original dated 27/09/2016, has given a categorical finding on the extended period and observed that the appellant has suppressed the fact of non-deposition of the service tax, and therefore, the appellant found to be indulged in

suppression with intend to evade the payment of service tax, but in the impugned order the Ld. Commissioner has given a specific finding that there is no intention to evade the payment of service tax on the part of the appellant. Still erroneously extended period has been invoked by the Ld. Commissioner and penalty has been imposed under Section 76 of the Finance Act, despite the fact that no penalty under Section 76 ibid was imposed by the Adjudicating Authority. He fairly submitted that the issue of extended period has not been raised before the Ld. Commissioner by the appellant. Ld. Authorised Representative appearing on behalf of the Revenue reiterated the findings recorded in the impugned order and prayed for dismissal of the appeal.

4. Since the Ld. Commissioner has recorded that there is no intention to evade the payment of service tax, therefore, he ought to have decided the issue of extended period of limitation and admittedly he failed to give any finding on this aspect. He also failed to give any valid reason of imposing penalty under Section 76 of the Finance Act, 1994. In view of the facts mentioned herein, therefore, without going into the merits of the matter, I am inclined to remand the matter before the Ld. Commissioner with a direction to decide the appeal afresh including the issue of extended period of limitation and also the issue of penalty under Section 76 ibid after giving hearing to the appellant.

5. In view of above, the appeal is allowed by way of remand.

(Dictated and pronounced in open court)

(AJAY SHARMA)
MEMBER (JUDICIAL)

Tejo