IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL,
WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-DB

COURT –IV

Service Tax ROM Application No. ST/51350/2018 CU [DB] &
Service Tax ROM Application No. ST/50010/2019 CU [DB] in
Service Tax Appeal No.ST/55497/2014- CU [DB]

M/s. Lalganga Builders Pvt. Ltd. …Appellant

Vs.

C.C.E. & S.T., Raipur … Respondent

Present for the Appellant : Mr.Varun Gaba, Advocate
Present for the Respondent: Mr.G.R. Singh, D.R.

Coram: HON'BLE MR. V.PADMANABHAN, MEMBER (TECHNICAL)
HON'BLE MRS. RACHNA GUPTA, MEMBER (JUDICIAL)

Date of Hearing/Decision: 15.02.2019

FINAL ORDER NO. 50314/2019

PER: RACHNA GUPTA

Present order disposes of two applications praying for rectification of mistake. One being filed by the appellant and the another by the Department. It is submitted on behalf of the Department that despite it is observed in the final order No.52480/2018 dated 19.06.2018 that, "the appellant cannot be relieved from the burden of paying the interest as directed by the adjudicating authority below" still no direction has been given to the appellant in the operative part of this order for depositing the amount of interest on the impugned liability. Order to that extent is prayed to be rectified.

2. Appellant has conceded its liability to pay the proportionate interest. In addition, it is submitted on behalf of the appellant that the benefit of Section 80, waiving of the penalties upon the appellant was already extended by Commissioner (Appeals) in the order as was challenged before this Tribunal. The only grievance before this Tribunal was that the show cause notice is barred by limitation, as no extended period would have been invoked by the Department for absence of any malice on the part of the appellant. It is impressed upon that the final order is appreciating the same still there is no express mention of the impugned demand to be limited to the normal period thereof. Rectification accordingly, is prayed.

3. After hearing both the parties and perusing the impugned final order, we are of the opinion are as follows:-

3. Since the appellant has conceded its liability to pay the interest, otherwise also it is so recorded in the order at para 6 (a) thereof, the prayer of the Department is acceptable as far as the payment of interest is concerned. However, in view of the grievance of the appellant the quantum of said interest is observed to be as follows:-

> *"7. As a result of entire above discussion, the appeal is partly allowed, however, directing Commissioner (Adjudication) to re-quantify the demand in terms of the above observation."*

4. It is apparent that appeal was partly allowed directing the Commissioner (Adjudication) to re-quantify the demand.

Further from para 6 (a) of the order, it is apparent that there is no contumacious conduct of the appellant for deliberate violation of the provisions of Service Tax Laws as has otherwise also been held by Commissioner (Appeals). When both these observations are read together in the light of the ground of appeals that it is clear that ground for invoking extended period of limitation has not available with the department accordingly hold that despite having an observation in favour of the appellant the final and express verdict has been skipped in the order. We therefore are of the opinion that the same amounts to an error apparent on record.

5. Resultantly, the prayer of appellant is hereby accepted. The Appeal is partly allowed as show cause notice is held barred by time and the adjudicating authority is directed to re-quantify the demand i.e. the demand confining to the normal period itself and also the interest payable, proportionate to the demand of the normal period. Both the applications stand disposed of in the aforesaid terms.

[Dictated and Pronounced in the open Court]

(RACHNA GUPTA) **MEMBER (JUDICIAL)**	**(V.PADMANABHAN)** **MEMBER (TECHNICAL)**

Anita