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/52244/2018-ST [SM]

[Arising out of Order-in-Appeal No.79 (AG)/CE/JDR/2018 dated 07-02-2018 passed by the Commissioner (Audit), Central Excise & CGST, Jodhpur]

M/s. Brijesh Cable Network,
J.P. Colony, Kota Junction, Kota **...Appellant**

Vs.

The Commissioner (Audit),
Central Goods & Service Tax, Jodhpur
G-105, New Jodhpur Industrial Area,
Opposite Diesel Shed, Jodhpur **... Respondent**

Present for the Appellant : Mr.Chirag Jain, CA
Present for the Respondent: Mr.K. Poddar, D.R.

Coram: HON'BLE MRS. RACHNA GUPTA, MEMBER (JUDICIAL)

Date of Hearing/Decision: 19/02/2019

Final ORDER NO. 50395/2019

PER: RACHNA GUPTA

The appellant herein is engaged in rendering services of cable operator. While scrutiny of its record for the period from 16.08.2002 to 31.03.2006, the Department observed that the party was receiving signals of various Television Networks through Multi System Operator (MSO) managed by M/s. Rajasthan Telematics Ltd., Kota and M/s. Radhaswamy Communications, Kota. The party also received signals of the broadcast relay by the MSO. The services provided by the party are taxable services w.e.f. 16.08.2002, which were charged to Service Tax at the rate of 5% upto 13.05.2003 and at the rate of 8% upto 09.09.2004 and thereafter @ 10% alongwith 2% of education cess during the period from 10.09.2004 to 31.03.2006 on the gross amount charged by the cable operator from the subscribers for the said service.

1.1 The Department further observed that during the period from 16.08.2002 to 31.03.2006 both the MSOs raised bills to the appellant on account of service provided for receiving cable signals from them for onward re-transmission to their subscribers in Kota. However, the appellant failed to discharge the service tax liability. Resultantly, the show cause notice No.13662 dated 09.10.2007 was served upon the appellant. The appellant despite joining the investigation did not provide any documentary evidence. Even the original adjudicating authority afforded five opportunities to the appellant to appear and submit documents. But appellant opted to not to supply the same. Resultantly, the order in original No.854-857 dated 25.08.2009 was passed confirming the demand of service tax of Rs.41,042/- for want of evidence on behalf of the appellant alongwith the interest and the penalty under Section 78 of the same amount. In addition, penalty under Section 76 and 77 was also imposed. Being aggrieved of the said order the appellant preferred the appeal which has been dismissed on the ground of limitation vide the order in appeal No.79 dated 31.01.2018. Being aggrieved, appellant is before this Tribunal.

2. I have heard Mr.Chirag Jain, ld. Chartered Accountant for the appellant and Mr.K. Poddar, ld. D.R. for the Revenue.

3. It is submitted on behalf of the appellant that after the Departments scrutinized the records of the appellant, the appellant very-much joined the investigation and provided all relevant details. However, the impugned show cause notice was never served at the appellant's address. No intimation, even subsequently, he got about the impugned adjudication. It is apparent from Order-in-Original as well that the same was passed ex-parte. It is further submitted that the appellant came to know about the Order-in-Original only from a recovery note published in the Newspaper dated 28.01.2012. In response thereto he deposited the amount of Service Tax i.e. Rs.41,042/- on 23rd July, 2013. On the assurance of the Department that if he deposited the amount of Service Tax there will be no further proceeding against him, that he deposited the said amount. However, in the year 2015 appellant got a phone call from the Department that he has been declared as un-traceable assessee. To find out the exact position, the appellant wrote a letter to Department on 6th August, 2015. No response was received from the Department. It is thereafter that in December, 2015, appellant again enquired about the status of the adjudication against

him. Seeking no further response that appeal is before Commissioner appeals was filed on 16.01.2016. It is submitted that all these facts were also brought to notice of the Commissioner (Appeals). However, the same has not been considered and the appeal has been dismissed on the ground of limitation. The appellant has relied upon the decision of **DR Mangli vs. Commissioner of Central Excise, Nagpur reported in 2014 (54) STR 396 (Tri. Mumbai),** impressing upon that the period of three months available to the Commissioner to condone the delay has to reckon from the date when the appellant actually received the copy of order in original. Affidavit of the appellant has also been placed on record to this effect. Order accordingly is prayed to be set aside. Appeal is prayed to be allowed.

4. Per-contra ld. DR has submitted that Commissioner (Appeals) has no statutory power to condone the delay beyond three months (60+30 days) The appeal in hand was filed after a delay of six years. It is further impressed upon that there is no cogent reason apparent on record, which may be considered as reasonable for the said delay of six years. It is also impressed upon that as per appellant's own submission, he got the knowledge of Order-in-Original in the year 2012 itself. Justifying the order, Appeal in hand is prayed to be dismissed.

5. After hearing both sides and perusing entire record, I observe and held as follows:-

The impugned is the case of cable operator services. Those services brought into the tax net w.e.f. 16.08.2002 by amending Section 65 of Finance Act, 2008. Despite that the party had neither obtained registration from the Department under cable operator services nor filed ST-3 return to the Department. Rather, kept suppressing their value of taxable service till the year 2006, when the matter was actually scrutinized by the Department. There is no denial of the appellant that during the investigation, in furtherance of said scrutiny, his statement was recorded and requisite documents were provided by him. It is thereafter that the impugned show cause notice dated 09.10.2007 was issued by the Department. Though the appellant has denied receiving the same, but he has not denied the scrutiny and participating the investigation. In addition there is no submission on his part that since the time of his joining the investigation till the date of issuance of impugned show cause notice there was any change of his address and that the said change was duly intimated to the Department as is prescribed under Rule 4 (2) of the Central Excise Rules. From the Order in Original it is apparent that the appellant despite being called almost five times could not appear. It is also apparent from the order that he not even filed the reply to the show cause notice. Thus the order announced against the appellant is for lack of evidence.

6. As per Department contention, the order was duly issued on the date of order itself at the address as was available with the Department. There is nothing on record to show that the order so issued ever got received back un-served with the endorsement of change of address to the Department. It is coming out from the submissions on behalf of appellant and even from the affidavit of the appellant as placed on record that the appellant came to know of the demand proceedings going on against it through a local daily newspaper 'Dinikbhaskar" dated 28.01.2012 under the article heading "Demand from General Notice". However, no copy of said Newspaper note is annexed with the affidavit. But it becomes an admitted fact that the knowledge of the impugned adjudication/ Order-in-Original came to the notice of the appellant in the year 2012 itself. It is also appellant's own admission that in furtherance of the said demand note, he made a deposit of Rs.41,042/- on 23rd July, 2013. It cannot be presumed from any stretch of imagination that demand notice would be containing only the demand of the service tax without specifying about the interest and the amount of penalty to also have been recovered from the appellant. Thus, it becomes clear that the knowledge of Order-in-Original was with the

appellant in the year 2012 for filing the appeal which was filed in the year 2016.

7. The only another ground of appellant is that he received a phone call from the Department about him being declared as untraceable assessee. No document is placed on record to support the same except an application dated 6th August, 2015. The perusal thereof shows that the application is also silent about any cogent reason for appellant to note to be aware of the interest and the penalty to have also been his liability along with the amount of service tax Rs.41,042/- as was deposited by him through challan No.0009 dated 23.04.2013. Otherwise also since the time of deposit till the aforesaid application a period of more than 2 years has already elapsed and in filing of the said appeal, there is another period of six months from the date of the said impressed upon letter. Perusal of appellants affidavit shows that the copy of Order-in-Original was received by him on 7th August, 2015. The appeal in hand is still filed on 16th January, 2016 i.e. beyond the period of 5 months. Accordingly, the case law relied upon by the appellant that is **DR Mangli (supra)** is opined not applicable to the given circumstances. Above all, Commissioner (Appeals) had limitation being a statutory mandate to not to condone the delay of more than three months. The delay herein is of six years and for sake of arguments, if the argument of appellant about the period to

reckon from the date of receipt of order is considered, the delay is still is of more than 5 months.

8. Despite the knowledge and receipt of impugned SCN, the absence of any effort to enquire about the orders in furtherance whereof the recovery proceedings as mentioned in the said Newspaper except a letter dated **6th August, 2015** is not opined sufficient for condoning delay of almost 6 years. Same rather amount to be highly negligent act.

9. I draw my support from the case law in the case of **Singh Enterprises vs. CCE, Jamshedpur reported in 2008 (221) ELT 163 (S.C.)** it is held as follows:**-**

> ***"10.*** *Sufficient cause is an expression which is found in various statutes. It essentially means as adequate or enough. There cannot be any straitjacket formula for accepting or rejecting the explanation furnished for delay caused in taking steps. In the instant case, the explanation offered for the abnormal delay of nearly 20 months is that the appellant concern was practically closed after 1998 and it was only opened for some short period. From the application for condonation of delay, it appears that the appellant has categorically accepted that on receipt of order the same was immediately handed over to the consultant for filing an appeal. If that is so, the plea that because of lack of experience in business there was delay does not stand to be reason. I.T.C.'s case (supra) was rendered taking note of the peculiar background facts of the case. In that case there was no law declared by this Court that even though the Statute prescribed a particular period of limitation, this Court can direct condonation. That would render a specific provision providing for limitation rather otiose. In any event, the causes shown for condonation have no acceptable value. In that view of*

the matter, the appeal deserves to be dismissed, which we direct. There will be no order as to costs."

10. In view of the entire above discussion, I do not find any infirmity in the order under challenge. In addition, I do not find any cogent reason still to provide opportunity to the applicant for the delay of 6 years from the date of Order-in-Original to have been condoned. The appeal resultantly, is hereby dismissed.

[Dictated and pronounced in the Open Court]

(RACHNA GUPTA)
MEMBER (JUDICIAL)

Anita