CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL NEW DELHI.

PRINCIPAL BENCH COURT NO.II

Service Tax Appeal No.51497/2018 (SM)

[Arising out of Order-in-Appeal No.70/CKJ/ST/UDR/2018 dated 21.02.2018 passed by the Commissioner (Appeals), Central Goods and Service Tax, Udaipur]

M/s. Manan Infra Development Pvt. Ltd. **Appellant**
Plot No.479-A, 4th Floor,
Sardarpura 5th Road,
Jodhpur, Rajasthan.

Versus

Commissioner of Central Goods and Service Tax, Customs & Central Excise, **Respondent**
G-105, New Industrial Area, Opp. Diesel
Shed, Basni, Jodhpur
Rajasthan.

APPEARANCE:

Shri O.P.Agarwal, Advocate for the appellant
Shri P. Juneja, Authorised Representative for the respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)

FINAL ORDER NO.50734/2019

DATE OF HEARING:13.05.2019
DATE OF DECISION:13.05.2019

ANIL CHOUDHARY:

Heard the parties.

2. The issue in this appeal is, whether for recovery of interest under Section 75 of the Finance Act, 1994, show cause notice could be issued invoking extended period of limitation.

3. The brief facts are that the appellant is registered with the Department and providing services under the category of "Construction of

Residential Complex". Further, the admitted facts are that for the period October, 2011 to March, 2013, the appellant deposited the tax quarterly and filed the returns with the Department. Subsequently, while scrutinising the ST-3 Returns and the documents evidencing the payment of service tax, it appeared that the appellant was a Private Limited Company and they were required to deposit service tax on monthly basis. Thus, on re-calculation on monthly basis, it appeared that they were liable to pay interest amounting to Rs.1,46,589/-as there was short tax paid on monthly basis. For the first two months of each quarter, it was admittedly paid with the third month, at the end of the quarter. Show cause notice dated 16.01.2015 was issued for the period October, 2011 to March, 2013 invoking extended period of limitation demanding interest under Section 75 of the Act for delay in deposit of service tax. Further, penalty under Section 77 ibid, was also proposed to be imposed for delay in depositing of service tax. The show cause notice was adjudicated on contest and the proposed demand of interest of Rs.1,46,589/- was confirmed and further, penalty of Rs.10,000/- was imposed under Section 77 of the Act.

4. Being aggrieved, the appellant preferred appeal before the Commissioner (Appeals), among other grounds, there was also a ground that show cause notice has not invoked Section 73(1), and there is no such proviso under Section 75 and hence, show cause notice is defective and no amount could be recovered. In the second ground, the demand was in view of the ruling of the Hon'ble Supreme Court in the case of **Jay Bharat Maruti ltd. -2014 (307) ELT 282 (P & H),** wherein ruling of this Tribunal in the case of **Hindustan Insecticides Ltd. – 2013 (297) ELT 332 (Delhi)** was reversed where this Tribunal had held that for

recovery of interest under proviso under Section 75 of the Finance Act, there is no time limit.

5. Ld. Counsel for the appellant states that the Commissioner (Appeals) has erred firstly relying upon the ruling of this Tribunal, which stands reversed by the subsequent ruling of the Punjab & Haryana High Court. Secondly, the ld. Commissioner (Appeals) has erred holding that non-mentioning of section 73(1) read with proviso, in the show cause notice is only a clerical error and accordingly, the show cause notice is valid. This observation is against the ruling of the Hon'ble Supreme Court in the case of **Brindavan Beverages (P) Ltd. – 2007 (213) ELT 487 (SC)**, wherein it has been held that that in order to avail the opportunity to meet the allegations, the show cause notice is the foundation on which the Department has to build-up its case. If the submissions in the show cause notice are not specific and on the contrary, are vague, lack details and /or unintelligible are sufficient to hold that the noticee was not given proper opportunity to meet the allegations indicated in the show cause notice. Similar view was taken in the following case laws:-

- **(1) Ballarpur Industries Ltd. -2007(215) ELT 489 (SC)**
- **(2) Amrit Foods – 2005 (190) ELT 433 (SC)**
- **(3) Shree Ram Steel Rolling Mills -2008(221)ELT 333(Bombay)**
- **(4) Nakoda textile Industries Ltd.-2009 (240)ELT199(Bombay)**

Ld. Counsel relies on the rulings of the Hon'ble Delhi High Court in the case of **Kwality Ice Cream Company -2012 (281) ELT 507 (Delhi)**, wherein it has been held that for demand of interest, period of limitation prescribed for claim of principal amount should also apply to the claim for interest thereon. As the normal period is one year and in exceptional circumstances 5 years in the case of misstatement, fraud, concealment, etc. , demand for interest raised after 3 years of payment of demand of duty is time barred and is set aside.

6. Accordingly, ld. Counsel prays for allowing their appeal.

7. Ld. Authorised Representative relies upon the impugned order. He states that the case laws relied upon are distinguishable on facts. He relies upon the following case laws:-

(1) Penna Cement Industries Ltd. -2015 (40) STR 295 (T-B)

(2) Toyo Engg. Corporation Ltd.-2015(37) STR 238 (T-M)

8. Ld. Authorised Representative further contends that there is no dispute with regard to quantum of tax liability, which is admittedly paid. Hence, the interest under Section 75 is automatically attracted as the tax is paid quarterly, instead of monthly basis.

9. Having considered the rival contentions, I find that the show cause notice is bad, both for invocation of extended period of limitation and also for non-invocation or non-mentioning of proper Section 73(1) with proviso. Accordingly, show cause notice is held to be non-maintainable. The impugned order is set aside and the appeal is allowed.

[Order dictated and pronounced in open court]

(Anil Choudhary)
Member (Judicial)

ckp