IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
EAST REGIONAL BENCH : KOLKATA

S.T.Appeal No.07/12 & CO-76105/17

(Arising out of Order-in-Appeal No.33/DIB/CE(A)/GHY/11 dt. 30.09.11, passed by Commissioner (Appeals) of Central Excise & Customs, Guwahati)

Commr. of Central Excise, Dibrugarh

Applicant (s)/Appellant (s)

Vs.

Shri Narayan Mukherjee

Respondent (s)

Appearance:

Shri H.S.Abedin, Asstt.Commr. (AR) for the Revenue (s)
Ms.Chandreyi Alam (Gupta), Adv. for the Respondent (s)

CORAM:

HON'BLE SHRI P. K. CHOUDHARY, JUDICIAL MEMBER
HON'BLE SHRI C. J. MATHEWS, TECHNICAL MEMBER

Date of Hearing : 13.03.2018
Date of Decision : 13.03.2018

ORDER NO.F/O/75626/2018

Per Coram :

The respondent is registered with Central Labour Commissioner under section 12 of Contract Labour (Regulation and Abolition) Act, 1970 for providing security services at Digboi Oil field. They received consideration which the Central Excise authorities sought to tax as provider of 'security agency service' for the period from September 1998 to March 2004 and from March 2004 to January 2005. The original authority confirmed demand of Rs.21,80,826/- which was upheld by the first appellate authority on the ground that the noticee had not denied collection of the service tax but failed to deposit with the exchequer. In appeal before the Tribunal, it was held that the first appellate authority had not adequately scrutinized the activity to ascertain coverage as 'security agency service', the sustainability on merit and application of bar of limitation. In the remand proceedings *vide* order-in-appeal no.33/DIB/CE(A)/GHY/11 dated 30th September 2011, Commissioner of Central Excise & Customs (Appeals), Guwahati held that, while the respondent was a provider of 'security agency service', the demand was not sustainable as there is no evidence of suppression and that the recovery had not been proposed under the appropriate provisions of the Finance Act, 1994.

2. Heard Learned Authorized Representative and Learned Counsel for the respondent.

3. The appeal has been filed by citing inadequacy in the impugned order in juxtaposition with the earlier disposal by the first appellate authority. The contents of the order relied upon by Revenue in disputing the impugned order having been set aside by the Tribunal in the first round of litigation, does not validate the grounds of appeal or submission to dispute the impugned order. There is no doubt that citing of the wrong provision will not, of itself, vitiate the demand. However, with a clear finding that the ingredients for invoking the extended period does not exist, the scope for recovery fails. Furthermore, reliance placed upon the decision of the Hon'ble Supreme Court in *N.B.Sanjana Assistant Collector of Central Excise, Bombay and others V. The Elphinstone Spinning and Weaving Mills Co Ltd. : [1978 (2) ELT (J 399) (S.C.)]* and *Collector of Central Excise,*

Calcutta V. Pradyumna Steel Ltd. : [1996 (82) ELT 441 (S.C.)] are not of any assistance to the Revenue in these circumstances. The claim of the respondent that they are not engaged in the business of providing 'security agency service' merely because they are registered under relevant labour law does not stand the test of law to exclude them from tax liability and as the impugned order has examined the scope of services and scope of contract in detail, demand does not sustain owing to bar of limitation.

4. In view of the above, the appeal of the Revenue is dismissed. Cross Objection also gets disposed off.

(Operative part of the order was pronounced in the open Court.)

Sd/
(P. K. CHOWDHARY)
MEMBER (JUDICIAL)

Sd/
(C.J. MATHEW)
MEMBER (TECHNICAL)

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