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

S.T.Appeal No.252/10

(Arising out of Order-in-Original No.55/Commr./ST/Kol.09-10 dt.31.03.2010 passed by Commissioner of Service Tax, Kolkata)

CST, Kolkata

Applicant (s)/Appellant (s)

Vs.

M/s TIL Ltd.

Respondent (s)

Appearance:

Shri A. K. Biswas, Supdt. (A.R.) for the Revenue (s)
Shri N. K. Kothari, C.A. for the Respondent (s)

CORAM:
HON'BLE SHRI P. K. CHOUDHARY, JUDICIAL MEMBER
HON'BLE SHRI BIJAY KUMAR, TECHNICAL MEMBER

Date of Hearing : 13.07.2018
Date of Decision : 13.07.2018

ORDER NO.FO/77242/2018

Per Shri P. K. Choudhary :

The present appeal is filed by Revenue against Order-in-Original No.55/Commr./ST/Kol.09-10 dt.31.03.2010.

2. The facts of the case in brief are that the respondent assessee is engaged in providing taxable services namely, (a) Management, maintenance or repair service ; (b) Erection & commissioning service and (c) Goods transport service. Show-cause notice dated 13.10.2008 was issued alleging non-payment of service tax. The adjudicating authority dropped the entire proceeding as initiated by the aforesaid show-cause notice. Revenue is in appeal before the Tribunal against dropping of the demand of Rs.3,40,048/- on the ground of limitation of

time and for imposition of appropriate penalty under Section 76, 77 and 78 of the Finance Act, 1994.

3. The ld.D.R. appearing on behalf of the Revenue, reiterated the grounds of appeal.

4. The ld.Counsel appearing on behalf of the respondent-assessee, submitted that they never disputed the fact of rendering "Business Auxiliary Service" during the period July, 2003 to December, 2005 and they suo-moto paid Rs.2,15,23,063/- on 03.11.2006 and Rs.38,55,853/- on 05.05.2008. Regarding allegation in the show-cause notice, the respondent assessee realized Rs.27,78,171/- during the period from July, 2006 to September, 2006, but did not pay service tax of Rs.3,40,048/- on the said amount. It is observed from the record that the relevant information was communicated by the assessee vide letter dated 16.01.2007, which was received by the Department on 29.01.2007. Show-cause notice was issued on 13.10.2008. Thus, the demand has been raised after the lapse of one year from the date of receipt of the relevant information. The adjudicating authority has observed that since ingredients of suppression and malafide on the part of the assessee, are not present in the instant case, the extended period of limitation is not invokable for raising demand. He set aside the demand as hit by limitation.

5. Heard both sides and perused the appeal records.

6. The adjudicating authority in the impugned order has observed as under :

> *"The other allegation in the show-cause notice is that the assessee realized Rs.27,78,171/- during the period July, 2006 to*

> *September, 2006 but did not pay service tax and Education Cess totaling Rs.3,40,048/- on the said amount. The assessee has not specifically traversed the above allegation in their submissions. However, it is found that they have challenged the entire demand on the ground of limitation. It is noted that the relevant information was supplied by the assessee vide letter dated 16.01.2007 which was received by the Department on 29.01.2007. The instant demand has been issued on 13.10.2008. Thus the demand has been raised after the lapse of one year from the date of receipt of the relevant information. Since ingredients of suppression and malafide on the part of the assessee are not present in the instant case, extended period is not invokable for raising demand. The demand for the said amount is therefore hit by limitation and the same is liable to be set aside."*

We observed that the show-cause notice was issued for levy of service tax under Head of "Business Auxiliary Service" along with interest and penalty. Since the entire service tax as well as interest was paid before issuance of the show-cause notice, the provision of Section 73(3) would be squarely applicable and hence, penalty was set aside. It was further held by the adjudicating authority that since the assessee was under a bonafide belief regarding taxability, the question of invocation of Section 73(4) of the Act, does not arise.

7. In view of the above discussions, we do not find any infirmity in the impugned order and the same is sustained. Accordingly, the appeal filed by the Revenue is dismissed.

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

Sd/	Sd/
(BIJAY KUMAR)	**(P. K. CHOUDHARY)**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

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