IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, EASTERN ZONAL BENCH: KOLKATA

S.T.Appeal No.94/09

(Arising out of Order-in-Appeal No.12/PAT/S.Tax/Appeal/2009 dated 19.01.2009 passed by the Commissioner (Appeals) of Customs, Central Excise & Service Tax, Patna)

M/s Suzica Color Laboratory

Applicant (s)/Appellant (s)

Vs.

Commr. of Central Excise & S.Tax, Patna

Respondent (s)

Appearance:

Shri B. N. Chattopadhyay, Consultant for the Appellants(s)
Shri S. S. Chattopadhyay, Supdt. (AR) for the Revenue

CORAM:

HON'BLE SHRI P.K.CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE SHRI V. PADMANABHAN, MEMBER (TECHNICAL)

Date of Hearing : 25.02.2019
Date of Decision : 25.02.2019

FINAL ORDER NO.75416/2019

Per Bench :

The present appeal is directed against the Order-in-Appeal No.12/PAT/S.Tax/Appeal/2009 dated 19.01.2009.

2. The appellant is engaged in providing photography services, which were liable to service tax under Section 65 (78) of the Finance Act, 1994. The Department noticed that the appellant was not paying service tax properly during the period 16.07.2001 to 31.03.2004. The following three alleged irregularities were noticed by the Departmental Officers :

(i) For the period 2001-2002, service tax became payable w.e.f. 16.07.2001. The Department was of the view that the appellant did not include the entire amount of developing and printing charges collected for payment of service tax. For the period 16.07.2001 to 31.03.2002, the Department proposed to make addition to the total income on a pro-rata basis on the basis of the amount collected for the full financial year. This resulted in service tax short payment of Rs.6,41,842/-.

(ii) The Department noticed that during the period 2002-03, there was a difference in the amount of charges collected by the appellant as appearing in the balance sheet and as declared by the appellant for payment of service tax. It was proposed to include the difference, which resulted in short payment of Rs.29,000/-.

(iii) The appellants, during the period in dispute were availing abatement under Notification No.12/2003 dated 20.06.2003. Such abatement was availed w.e.f. 01.07.2003 for the value of goods and materials sold while providing the photography services. The Department was of the view that such abatement was not allowable inasmuch as the goods and materials were not sold separately but were consumed in providing these services. For this, the service tax liability is of Rs.3.69 lakhs.

3. Show-cause notice dated 08.08.2006 was issued to the appellant proposing the demand of differential service tax not paid by the appellant which was decided by the original authority vide his Order dated 21.11.2006, in which the proposal for demand of differential service tax was upheld. In addition, there is an order for payment of interest under Section 75 as well as penalties imposed under various Sections of the Finance Act, 1994.

4. In the first round of litigation before the Tribunal, the case was remanded to the Commissioner (Appeals) for passing a denovo order. The impugned order stands passed in the denovo proceedings upholding the demand for service tax.

5. The appellant is represented by Shri B.N.Chattopadhyay, ld.Consultant and Revenue is represented by Shri S. S.Chattopadhyay, ld.D.R.

6. The ld.Consultant fairly conceded that the main issue for availment of abatement under Notification No.12/2003 dated 20.06.2003 for the value of materials consumed in providing photographic services stands decided against the appellant by the Larger Bench of the Tribunal in the case of Aggarwal Colour Advance Photo System Vs. Commr. of Central Excise, Bhopal reported in 2011 (23) STR 608 (Tri.-LB). However, he submitted that the appellant will be entitled to the benefit of time bar inasmuch as the issue of abatement for the value of materials used was disputed which came to be settled only with the decision of the Larger Bench in the case of Aggarwal Colour Advance Photo System (supra). He also relied on the decision of the Delhi Bench of the Tribunal in the case of Truvision Colour Lab. Vs. Commissioner of Central Excise, Indore reported in 2017 (51) STR 267 (Tri.-Del.), in which the benefit of bonafide belief was extended by the Tribunal after noticing that the issue came to be decided only in the case of Aggarwal Colour Advance Photo System (supra). He also submitted that the ST-3 Returns filed periodically by the appellants were assessed by the Department. As such, the

Department was not entitled to invoke larger period of limitation under Section 73 of the Finance Act, 1994 for demand of service tax.

7. The ld.D.R. for the Revenue justified the impugned order. He submitted that the issue stands decided in favour of the Revenue and hence, the impugned order merits to be sustained.

8. Heard both sides and perused the record.

9. We note, at the outset, that the issue with reference to the inclusion of value of material in view of the provision of service, stands decided in favour of Revenue in the Larger Bench decision of the Tribunal in the case of Aggarwal Colour Advance Photo System (supra). Consequently, the main issue is to be decided on merit in favour of Revenue. But we note that the demand stands raised by invoking the longer period of limitation.

10. We take note of the Tribunal's decision in the case of Truvision Colour Lab. (supra) wherein, in identical circumstances, it was held that the longer period of limitation would not be available to the Revenue. The Tribunal in turn placed reliance on the earlier decision in the case of Commissioner of Central Excise, Raipur Vs. Centre Point Colour Lab reported in 2014 (34) STR 126 (Tri.-Del.), in which, in Paras 5 and 6 of the said decision, the above view was articulated.

11. By following the above decision, we come to the conclusion that the appellant will be entitled to bonafide belief and longer period of limitation will not be available to the Revenue to raise the demand in this case.

12. We note that the show-cause notice dated 08.08.2006 has been issued for demand of service tax for the period 16.07.2001 to

31.03.2004. Consequently, no demand will survive within the normal period of limitation. Consequently, the demand raised in other two issues also is liable to be set aside.

12. In the result, the impugned order is set aside and the appeal is allowed.

(Dictated and pronounced in the open court)

Sd/	Sd/
(P.K.Choudhary)	**(V.Padmanabhan)**
Member (Judicial)	**Member (Technical)**

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