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

REGIONAL BENCH – COURT NO. 1

**Service Tax Appeal No. 75778 of 2014**

(Arising out of Order-in-Original No.02/ST/Ayukt/2014 dated 31.01.2014 passed by the Commissioner, Central Excise and Service Tax, Patna, 3rd Floor, C.R. Building (Annexe), Birchand Patel Path, Patna – 800 001)

**Commissioner, Central Excise and Service Tax** **: Appellant**
3rd Floor, C.R. Building (Annexe), Birchand Patel Path,
Patna – 800 001

**VERSUS**

**M/s. Gurunanak Engineering Works** **: Respondent**
C/o. Vivekanand Singh,
At.-Choudhary Tola, P.O.-Kahalgaon,
District – Bhagalpur, PIN – 813 203

**AND**

**Service Tax Appeal No. 76234 of 2014**

(Arising out of Order-in-Original No.06/ST/Ayukt/2014 dated 29.04.2014 passed by the Commissioner, Central Excise and Service Tax, Patna, 3rd Floor, C.R. Building (Annexe), Birchand Patel Path, Patna – 800 001)

**Commissioner, Central Excise and Service Tax** **: Appellant**
3rd Floor, C.R. Building (Annexe), Birchand Patel Path,
Patna – 800 001

**VERSUS**

**M/s. Royal Enterprises** **: Respondent**
At.-Anand Nagar, Paithanpura, P.O.-Kahalgaon,
District – Bhagalpur, PIN – 813 214

**APPEARANCE:**

Shri S. Mukhopadhyay, Authorized Representative for the Appellant/Dept.

Shri Manish Rastogi, Advocate for the Respondents

**CORAM:**

**HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)**
**HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)**

**FINAL ORDER NOs. 75501-75502 / 2024**

DATE OF HEARING: 06.03.2024

DATE OF DECISION: 13.03.2024

**Order : [Per Shri Ashok Jindal]**

Both the appeals are having a common issue and therefore, both are disposed of by a common order.

2. The facts of the case are that the respondents were engaged in construction activities, but were not discharging Service Tax, during the period from April 2006 to March 2009, being the sub-contractors. The main contractor was discharging Service Tax liability. The Revenue is of the view that during the impugned period, sub-contractors are required to pay Service Tax in terms of Master Circular No. 96/7/2007-S.T. dated 23.08.2007. Therefore, Show Cause Notices were issued to both the respondents, both dated 13.10.2011, by invoking the extended period of limitation.

3. The adjudicating authority after finding the position that the main contractor had discharged the liability of Service Tax arising out of the work undertaken by the respondents, dropped the proceedings against both the respondents. Aggrieved from the said orders, the Revenue is before us.

4. The Ld. Authorized Representative appearing on behalf of the appellant/Revenue submits that during the impugned period, the respondents were knowing that in terms of the Master Circular No. 96/7/2007-S.T. dated 23.08.2007, they were liable to pay Service Tax, being a sub-contractor, but were not paying Service Tax and thus Service Tax was recoverable from the respondents and penalties were imposable.

5. The Ld. Counsel appearing on behalf of the respondents opposed the contention of the Ld. Authorized Representative for the appellant and submits that it is an admitted position that the Show Cause Notices for the period from April 2006 to March 2009 had been issued by invoking the extended period of limitation, on 13.10.2011, which were highly barred by limitation.

5.1 Moreover, it is contended that the activities undertaken by the respondents were well-known to the Department in 2008 itself when the audit was conducted at the end of the main contractor and thereafter, the Show Cause Notices were issued on 13.10.2011, which were highly time-barred.

6. Heard the parties and considered their submissions.

7. On going through the facts placed before us, we find that although in terms of the Master Circular No. 96/7/2007-S.T. dated 23.08.2007 the respondents were liable to pay Service Tax being the sub-contractor, on the premise that the main contractor had discharged their Service Tax liability, the respondents did not pay Service Tax. The fact of non-payment of Service Tax had come to the knowledge of the Revenue in 2008 when the audit was conducted at the end of the main contractors, who were discharging Service Tax liability on the activity of the respondents who were sub-contractors. Despite that, no investigations were conducted at the end of the respondents.

7.1 Moreover, the Show Cause Notices were issued after almost three years of knowing the fact that the respondents were not paying Service Tax being sub-contractors.

8. In these circumstances, we hold that whole of the demand is barred by limitation.

9. Accordingly, by upholding the impugned orders, we do not find any merit in the appeals filed by the Revenue. The same are dismissed.

(Order pronounced in the open court on **13.03.2024**)

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| Sd/- | Sd/- |
| **(K. ANPAZHAKAN)** | **(ASHOK JINDAL)** |
| MEMBER (TECHNICAL) | MEMBER (JUDICIAL) |

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