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

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 71119 of 2013

(Arising out of Order-in-Original No. 23/Commr/ST/GHY/12-13 dated 14.03.2013 passed by the Commissioner of Central Excise and Service Tax, Guwahati, Sethi Trust Building, G.S. Road, Bhangagarh, Guwahati – 781 005)

M/s. Shree Subham Syndicate **: Appellant**
K.K. Colony, Jagiroad – 782 410

VERSUS

Commissioner of Central Excise and Service Tax **: Respondent**
Guwahati, Sethi Trust Building, G.S. Road, Bhangagarh,
Guwahati – 781 005

APPEARANCE:

Shri J.K. Mittal, Advocate for the Appellant

Shri J. Chattopadhyay, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO. 75817 / 2024

DATE OF HEARING / DECISION: 01.05.2024

ORDER: [PER SHRI ASHOK JINDAL]

The appellant is in appeal against the impugned order wherein the demand has been confirmed against the appellant by invoking the extended period of limitation under the category of "business auxiliary service" for the period from 01st October, 2006 to 31st August, 2010 whereas the Show Cause Notice has been issued on 17th April, 2012.

2. The facts of the case are that the appellant had been awarded a work order from M/s. Hindustan Paper Corporation Limited for handing the finished paper in the product warehouse. The said activity was

initially sought to be taxed under the category of "cargo handing service" for the earlier period for which a Show Cause Notice had been issued to the appellant by invoking the extended period of limitation. Proceedings initiated by way of the said Show Cause Notice were dropped by the Hon'ble High Court holding that the demand in the said case is barred by limitation.

2.1. Again, the present Show Cause Notice has been issued to the appellant seeking to re-classify their activity under "business auxiliary service" for the period impugned in this case. The said Show Cause Notice has been issued on 17th April, 2012 by invoking the extended period of limitation.

3. The matter was adjudicated and the demand of Service Tax was confirmed vide the adjudication order without considering the defence taken by the appellant that as per the decision of the Hon'ble Apex Court in the case of *Nizam Sugar Factory v. Collector of Central Excise, A.P. [2006 (197) E.L.T. 465 (S.C.)]* proceedings against the appellant were barred by limitation.

3. Aggrieved from the said order, the appellant is before us.

4. Today when the matter was heard, the Ld. Counsel appearing on behalf of the appellant submitted that admittedly, for the same activity, initially a Show Cause Notice had been issued to the appellant to demand Service Tax under the category of "cargo handling service" by invoking the extended period of limitation and the said proceedings have been dropped; for the same activity, again, the present Show Cause Notice has been issued, to

demand Service Tax under the category of "business auxiliary service", by invoking the extended period of limitation. It is therefore contended that the respondent is in confusion as to whether the said activity falls under "cargo handling service" or "business auxiliary service" and hence, the extended period of limitation is not invokable in the facts and circumstances of the present case. He therefore prayed that the impugned order be set aside.

4.1. To support his contention, he relied upon the decision of the Hon'ble Apex Court in the case of *Nizam Sugar Factory (supra)* as well as the decision of this Tribunal in the case of *Ganesh Trading Company v. Commissioner of Central Excise & Service Tax, Guwahati [Final Order No. 75162 of 2024 dated 06.02.2024 in Service Tax Appeal No. 76101 of 2014 – CESTAT, Kolkata]*

5. On the other hand, the Ld. Authorized Representative for the Revenue reiterated the findings in the impugned order.

6. Heard the parties and considered their submissions in detail.

7. We find that initially, a Show Cause Notice was issued to the appellant for the very same activity, to re-classify their service under the category of "cargo handling service", which was dropped by the Hon'ble High Court. Later on, the Revenue sought to classify the said activity under the category of "business auxiliary service" by way of the impugned Show Cause Notice by invoking the extended period of limitation. Since the Revenue itself is in confusion as to whether the activity undertaken by the appellant falls under cargo handling service or business auxiliary

service, in these circumstances, we hold that the extended period of limitation is not invokable and the charge of suppression cannot be alleged against the appellant.

8. In view of this and relying on the decision in the case of *Nizam Sugar Factory (supra)* and *Ganesh Trading Company (supra),* we hold that whole of the demand against the appellant is barred by limitation. Accordingly, the impugned proceedings are set aside.

9. In the result, the appeal is allowed with consequential relief, if any.

(Dictated and pronounced in the open court)

Sd/-
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd