IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.1

Service Tax Appeal No.75790 of 2015

(Arising out of Order-in-Appeal No.33/JSR/2015 dated 07.05.2015 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Ranchi)

Shri Surjit Singh
(Sopodera Basti, Sarjamada, Tata Nagar,East Singhbhum-831002)

Appellant

VERSUS

Commissioner of Central Excise & Service Tax, Jamshedpur
(143, New Baradwari, Sakchi, Jamshedpur-831001)

Respondent

WITH

Service Tax Appeal No.75791 of 2015

(Arising out of Order-in-Appeal No.33/JSR/2015 dated 07.05.2015 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Ranchi)

Shri Pradip Mahakur
(Bhalki, Potka,East Singhbhum)

Appellant

VERSUS

Commissioner of Central Excise & Service Tax, Jamshedpur
(143, New Baradwari, Sakchi, Jamshedpur-831001)

Respondent

AND

Service Tax Appeal No.75792 of 2015

(Arising out of Order-in-Appeal No.34/JSR/2015 dated 07.05.2015 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Ranchi)

M/s Sri Lokenath Enterprises
(Nr.Holi Family School,Main Road, Parsudih, Jamshedpur)

Appellant

VERSUS

Commissioner of Central Excise & Service Tax, Jamshedpur
(143, New Baradwari, Sakchi, Jamshedpur-831001)

Respondent

APPERANCE :

Shri S.P.Siddhanta, Consultant for the Appellants
Shri D.Sue & Shri P.Das, both Authorized Representatives for the Respondent

CORAM:
HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR.K.ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.75429-75431/2025

DATE OF HEARING : 29 JANUARY 2025

DATE OF PRONOUNCEMENT : 24 FEBRUARY 2025

Per Ashok Jindal :

In all the appeals, the issue is common, therefore, all are disposed off by a common order.

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2. The facts of the case are that the appellant is a sub-contractor of M/s Tarapore & Company and provided manpower services and the principal contractor has paid the service tax.

2.1 A show-cause notice was issued to the appellant on 24.09.2013 demanding service tax for the period April, 2008 to March, 2012.

2.2 The matter was adjudicated. The demand of service tax was confirmed along with interest and a penalty of Rs.6,44,725/- was imposed under Section 78 of the Finance Act, 1994 and a penalty of Rs.10,000/- was also imposed under Section 77 of the Finance Act, 1994.

2.3 Being aggrieved with the said order, the appellant is before us.

Service Tax Appeal No.75791 of 2015

3. The facts of the case are that the appellant is a sub-contractor of M/s Tarapore & Company and provided manpower services and the principal contractor has paid the service tax.

3.1 A show-cause notice was issued to the appellant in May, 2013 demanding service tax for the period April, 2010 to December, 2011 by invoking extended period of limitation and by way of adjudication, a demand of Service Tax was confirmed and a penalty of Rs.3,51,672/- was imposed under Section 78 of the Act and a penalty of Rs.10,000/- was imposed under Section 77 (2) of the Act.

3.2 Being aggrieved with the said order, the appellant is before us.

Service Tax Appeal No.75792 of 2015

4. The facts of the case are that the appellant is a sub-contractor of M/s Tarapore & Company and provided manpower services and the principal contractor has paid the service tax.

4.1 A show-cause notice dated 24.09.2013 was issued to the appellant demanding service tax of Rs.6,89,974/- for the period April, 2008 to March, 2012 by invoking extended period of limitation. The adjudication took place and a demand of Rs.6,89,974/- was confirmed along with interest and equivalent amount of penalty was imposed under Section 78 of the Act and a penalty of Rs.10,000/- was also imposed under Section 77 of the Finance Act, 1994.

4.2 Being aggrieved with the said order, the appellant is before us.

5. The ld.Consultant for the appellants submits that as the show-cause notices have been issued by invoking extended period of limitation, therefore, the demands are not sustainable against the appellants as the appellants did not suppress any facts from the Department. He further submits that as the main contractor has paid

the service tax. In that circumstances, it is a situation of revenue neutrality. Therefore, no demands are sustainable.

6. On the other hand, the ld.A.R. for the Revenue supported the impugned order and submits that as per Circular No.96/7/2007-ST dated 23.08.2007, it has been clarified that the contractor is required to pay service tax for the services provided by the sub-contractor to main contractor. Therefore, the demands are rightly confirmed .

7. Heard both sides and considered the submissions.

8. We find that the two issues are involved herein, which are as under :

Issue (a) : Whether in case the main contractor has paid the service tax, the appellants are required to pay service tax on the services rendered by the appellants being sub-contractor, or not ?

Issue (b) : Whether the extended period of limitation in the facts and circumstances is applicable or not ?

Issue (a) : Whether in case the main contractor has paid the service tax, the appellants are required to pay service tax on the services rendered by the appellants being sub-contractor, or not?

Admittedly, the appellant is a service provider and they are required to pay service tax on the services rendered by them as clarified by CBEC Circular No.96/7/2007-ST dated 23.08.2007, wherein it has been clarified that for the services rendered by the sub-contractor, the sub-contractor is required to pay service tax.

9. Therefore, we hold that on merit, the appellant is liable to pay service tax as demanded.

Issue (b) : Whether the extended period of limitation in the facts and circumstances is applicable or not ?

10. Admittedly, without investigation, it could have been revealed that whether the appellants are providing man power services to the main contractor or not nor after investigation, it came to the notice to the Department that the appellant is providing man power services and entitled in not to pay service tax. It is a fact on record that the appellants did not take service tax registration also. In that circumstances, unless and until, there is a bonafide act on the part of the appellants, the extended period of limitation has rightly invoked.

11. The appellant has also relied on the decision of this Tribunal in the case of Blackstone Polymers Vs. Commissioner of Central Excise, Jaipur II reported in 2014 (301) ELT 657 (Tri.-Del.) to say that the extended period of limitation is not invokable. In that case, the facts are not applicable to the facts and circumstances in this case. As in that case, the buyers have disclosed in their Books of Accounts and Balance Sheet, the receipt of compensation. In this case, it is not the case of the appellant. Therefore, the facts are not applicable to the facts and circumstances of case in hand.

12. Further, the ld.Consultant has relied on the decision of this Tribunal in the case of Commissioner of Central Excise, Pune III Vs. Akruti Projects reported in 2015 (37) STR 348 (Tri.-Mumbai). We find that in the said case, the period is July, 2006 to March, 2007, which is

well before in the case of S.V.Engg. Construction Vs. Commissioner of Customs, Central Excise & Service Tax, Guntur reported in 2015 (40) STR 780 (Tri.-Bang.). We find that in both the cases, the period involved is prior to the clarification given by the Department by way of CBEC Circular No.96/7/2007-ST dated 23.08.2007. Therefore, the facts in hand are not similar to the case relied upon by the appellants. Accordingly, they do not get any benefit of the above cited decisions.

13. In view of the above discussions, we hold that the demands are sustainable on merits and extended period of limitation is rightly invoked.

14. In these circumstances, we do not find any merit in the appeals filed by the appellants. Therefore, by upholding the impugned orders, we dismiss the appeals filed by the appellants.

(Pronounced in the open court on **24.02.2025**)

(Ashok Jindal)
Member (Judicial)

(K.Anpazhakan)
Member (Technical)

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