IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH : KOLKATA
REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 75129 of 2014

(Arising out of Order-in-Original No.06/ST/Commissioner/2013 dated 30.10.2013 passed by Commissioner of Customs, Central Excise & Service Tax, Patna)

M/s Sai Construction **: Appellant**
R.T. Bhawan, Beside Punjab National Bank, Punaichak, Patna.

VERSUS

Commissioner of Central Excise & Service Tax, Patna **: Respondent**
3rd Floor, Central Revenue Building (Annexe), Beerchand Patel Marg, Patna-800 001.

APPEARANCE:

Shri Tarun Chatterjee, Advocate & Ms. Sneha Das, Authorized Representative for the Appellant

Shri P.Das, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO. 76445/ 2025

DATE OF HEARING :02.06.2025

DATE OF DECISION:02.06.2025

Order : [Per Shri Ashok Jindal]

By way of this appeal the appellant is contesting demand on account of short payment of Service Tax amounting to Rs. 49,15,187/- and Rs. 1,35,628.

2. The facts of the case are that appellant is a contractor engaged in business of supply of tower, erection of tower including civil works and electrical works and painting works of telecommunication tower.

3. The appellant was registered under the category of 'Erection, Commission or Installation Service' and paying Service Tax on the value of 33%

of the total amount in terms of Notification No. 1/2006-ST, dated 01.03.2006. The investigation was conducted against the appellant for the period 01.04.2006 to 31.03.2010 and it was found that appellant has short paid the service tax of Rs. 54,70,550/-. Therefore, a Show Cause Notice dated 18.07.2011 was issued by invoking extended period of limitation to deny the benefit of Notification No. 1/2006-ST dated 01.03.2006.

4. The matter was adjudicated. Demand in the Service Tax proposed in the Show Cause Notice was confirmed alongwith interest and penalty was also imposed.

5. Aggrieved from the said order appellant is before us.

6. The Ld. Counsel for the appellant admitted the short payment of Service Tax amounting Rs. 4,19,734/- . For the rest of the demand it is the contention of the appellant that the Show Cause Notice issued to the appellant is barred by limitation as Show Cause Notice has been issued on 18.07.2011 by invoking extended period of limitation for the period 01.03.2006 to 31.03.2010 whereas the appellant was registered with the department and paying Service Tax and furnishing their ST3 returns in time. In that circumstances extended period of limitation is not invokable. To support this contention he relied on the decision of Arya Logistics Versus Commissioner of C.Ex & S.T., Rajkot, 2024 (80) G.S.T.L. 108 (Tri-Ahmd.)

7. On the other hand Ld. Authorized Representative reiterated the findings of the impugned order.

8. Heard the parties. Considered the submissions.

9. Without going into the merits of the case we are deciding the issue on limitation whether the facts and circumstances of the case the extended period of limitation is invokable or not. Admittedly the appellant is registered with the Service Tax department and paying Service Tax and filing their ST3 returns in time claiming the benefit of Notification No. 1/2006-ST dated 01.03.2006. In that circumstances the Show Cause Notice issued on 18.07.2011 for the period 01.03.2006 to 31.03.2010 is barred by limitation. The same view was taken by this Tribunal in the case of Arya Logistics (Supra) wherein this Tribunal observed as under:

"*4.1. We find that the issue involved in this case is regarding the demand of service tax for the period April 2008 to March, 2011 on the ground that the appellant has availed ineligible benefit of Notification No. 1/2006-ST dated 1.3.2006 by discharging the service tax liability by availing Cenvat Credit and paid service tax after availing abatement of 70% of the gross amount. We find from the records and copy of ST-3 produced before us that appellant had been filing the ST-3 returns regularly to the Jurisdictional Range Officers. It is on record that the appellant shown all the details in ST-3 returns. We find that Appellant has shown the category of transport of Goods by rail services in all the ST-3 Returns and has also shown the fact that they were availing Cenvat Credit. In the said ST-3 Return, admittedly against the "Column A1-Name of Taxable Service" Appellant have shown name of service as Goods Transport Agency and Transport of Goods in Container by Rail Service. Further in column 5B* *appellant have shown the details of Cenvat Credit taken and utilized.*

4.2. It becomes clear from the ST-3 Return that the fact that appellant were discharging Service Tax on transport of Goods in container by Rail Service and availing Cenvat Credit and utilized the Cenvat Credit was in the knowledge of the Revenue. However, Show Cause Notice to the Appellant was issued on 26.02.2013. In as much as the entire information was in the knowledge of the Revenue, the longer period of limitation is not available. In view of these facts the show cause notice should have been issued within the normal period of one year as prescribed under Section 73(1), whereas the show cause notice for the period April 2008 to March 2009 was issued on 26.02.2013 i.e. after prescribed limit of one year. As per the above fact, there is no suppression of fact on the part of the appellant. We also find that it is admitted fact that the appellant have taken service tax registration and are filing the periodical returns regularly. The appellant have maintained proper books of account in the normal course of business. It is pertinent to note that the entire case of the department on merit is that since appellant have availed Cenvat Credit, they violated the condition of abatement Notification No. 1/2006-ST. As discussed above the facts that availment of Cenvat Credit and payment of Service Tax on the abated value were declared in the ST-3 return. Hence, having all the facts were disclosed to the department, nothing prevented department from issue of show cause notice within normal period of one year. Therefore, the demand raised in the show cause notice is clearly time barred.

4.3. Since the demand is not sustainable on limitation alone, we refrain from giving finding on merit of the case and the same is left open."

10. Therefore, following the decision in the case of Arya Logistics (Supra) we hold that demand of Rs. 49,15,187/- and Rs. 1,35,628/- is not sustainable. Accordingly, same is set aside.

11. As appellant has admitted certain demand amounting to Rs. 4,19,734/-the same is appropriated from the amount already paid by the appellant amounting to Rs. 7,00,000/-. In the facts and circumstances of the case no penalty is imposable on the appellant.

12. In these terms appeal is disposed of.

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

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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