CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. 02

Service Tax Appeal No. 86373 of 2015

(Arising out of Order-in-Appeal No. NGP/EXCUS/000/APP/019/15-16 dated 06.04.2015 passed by Commissioner (Appeals) Central Excise & Customs, Nagpur)

M/s Balaji Ramchandra Ande **.....Appellant**
92, New Adarsh Colony, Ausa Road,
Latur – 413 531.

VERSUS

Commissioner of Central Excise, Customs & Service Tax, Aurangabad. **.....Respondent**
Town Centre N-5, Cidco,
Aurangabade – 431 003

WITH

Service Tax Appeal No. 86374 of 2015

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Latur – 413 531.

VERSUS

Commissioner of Central Excise, Customs & Service Tax, Aurangabad. **.....Respondent**
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Appearance:

Shri D.R. Gadekar, Advocate for the Appellant
Shri Dilip Shinde, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. A/88569-88570/2018

Date of Hearing : 29.11.2018
Date of Decision: 29.11.2018

Per: S.K. MOHANTY

These two appeals are directed against the impugned order dated 06.04.2015 passed by the Commissioner (Appeals), Central Excise & Customs, Nagpur.

2. Brief facts of the case are that during the period 01.04.2006 to 31.03.2007, the appellant had provided the taxable services under the category of "Maintenance & Repair" and "Manpower Recruitment & Supply Agency" Services to M/s. BSNL, Latur; the appellant did not pay service tax attributable to such taxable services. Accordingly, the department initiated show cause proceedings, which culminated into the adjudication orders dated 31.07.2014, in confirming the adjudged demands on the appellants. On appeal, the Ld. Commissioner (Appeals) vide the impugned order dated 06.04.2015 has upheld the original order and rejected the appeals filed by the appellant.

3. Heard both sides and perused the records.

4. The appellant has contended that during the disputed period, the service provider M/s. BSNL did not pay the service tax amount to the appellant for making deposit of the same into the Government exchequer. It has further been stated that the services provided by the appellant were not confirming to the taxable service defined under the Finance Act, 1994 and thus, the appellant was not under the statutory obligation to discharge service tax on the services provided by it to M/s. BSNL. The appellant further contended that the show cause proceedings initiated by the department were barred by limitation of time.

5. On the other hand, the Ld. AR appearing for the Revenue reiterated the findings recorded in the impugned order.

6. We find from the case records that the appellant had informed the department that its taxable turnover did not exceed the threshold limit prescribed in the statute for payment of service tax and accordingly, requested for surrender/cancellation of the registration certificate. Pursuant to such request of the appellant, the Jurisdictional Range Superintendent vide letter dated 12.04.2007 had informed that the action would be taken after verification of the ST-3 Returns. Further, from the reply dated 25.07.2008 filed by the appellant pursuant to the SCN, we also find that the appellant had specifically stated that it did not receive the service tax amount from the service provider. It is evident from above that the appellant had no *mala fide* intention in defrauding the government revenue. The department in this case had invoked the *proviso* clause appended to Section 73 of the Finance Act, 1994 for confirming the adjudged demands on the appellant. The said statutory provisions mandate for issuance of show cause notice within a period of one year from the relevant date for recovery of short levy/non-levy etc. of service tax. The proviso clause appended to the said section provides that in case of fraud; collusion; wilful misstatement or suppression of facts, instead of issuance of show cause notice within a period of one year, same can be issued within a period of five years from the relevant date. In this case, it is an admitted fact on record that the proceedings were initiated beyond the normal period of one year. For invoking the extended period of limitation as stipulated under the proviso clause, the department has to specifically allege and substantiate that there is element of suppression on part of the assessee in defrauding the government revenue. On perusal of the show cause notice as well as the orders passed by the lower authorities, we do not find that the department had proved its case that there is in fact involvement of the ingredients mentioned in the said proviso clause. Further, the letter dated 12.04.2007 addressed by the Range Superintendent clearly mentioned that upon verification of the ST-3 Returns, the request made by the appellant was considered for cancellation/surrender of the

registration certificate. Thus, it is evident that the entire facts of providing the services by the appellant to M/s. BSNL and non-payment of service tax thereon was within the knowledge of the department and the show cause notice was not issued within the normal period of one year. Hence, we are of the considered view that the extended period of limitation cannot be invoked for confirmation of the adjudged demands.

7. In view of above, we do not find any merits in the impugned order, insofar as it has upheld the adjudged demands confirmed on the appellant beyond the normal period of limitation. Accordingly, after setting aside the impugned order, we allow the appeals in favour of the appellant on the ground of limitation alone.

(Operative part of the order pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(P. Anjani Kumar)
Member (Technical)

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