CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH AT MUMBAI

REGIONAL BENCH - COURT NO. 02

Service Tax Miscellaneous Application No. 86781 of 2018
(on behalf of Appellant)
in
Service Tax Appeal No. 85861 of 2015

(Arising out of Order-in-Original No. 65-66/RN/Commr/M-II/13-14 dated 26.12.2014 passed by Principal Commissioner of Central Excise, Mumbai-II)

M/s. Sai Star Distributors ....**Appellant**
Shop No. 23, 24, Gokul Nagari-II,
Surya Village Kandivali East,
Mumbai-400101

VERSUS

Commissioner of Central Excise, Mumbai-II .....**Respondent**
9th Floor, Piramal Chambers,
Jijibhoy Lane, Lalbaug, Parel,
Mumbai - 400012

WITH

Service Tax Appeal No. 85862 of 2015

(Arising out of Order-in-Original No. 65-66/RN/Commr/M-II/13-14 dated 26.12.2014 passed by Principal Commissioner of Central Excise, Mumbai-II)

M/s. Sai Star Distributors ....**Appellant**
Shop No. 23, 24, Gokul Nagari-II,
Surya Village Kandivali East,
Mumbai-400101

VERSUS

Commissioner of Central Excise, Mumbai-II .....**Respondent**
9th Floor, Piramal Chambers,
Jijibhoy Lane, Lalbaug, Parel,
Mumbai - 400012

Appearance:

Shri Anil Mishra, Advocate for the Appellant
Shri Roopam Kapoor, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO. A/87626-87627/2019

Date of Hearing: 11.04.2019
Date of Decision: 11.04.2019

PER : S.K. MOHANTY

The applicant-appellant has filed the miscellaneous application, for consideration of additional grounds of appeal urged therein in respect of the appeals already filed by it against the impugned order dated 15.01.2015 passed by the Ld. adjudicating authority. The present application was filed under Rule 23 of the CESTAT (Procedure) Rule, 1982. The grounds raised in the present application were to the effect that the show cause proceedings initiated by the department were barred by limitation of time inasmuch as service tax was not deposited by it, owing to the reason that such liability had already been discharged by the principle service provider. The applicant-appellant also contended that there was confusion with regard to the clarification furnished by CBEC vide circular dated 01.08.2002 with regard to the person actually liable for payment of the service tax. With regard to the limitation aspect, the appellant has contended that in absence of involvement of the ingredients, viz. suppression, mis-statement etc., the proviso clause under Section 73(1) of the Finance Act, 1994 cannot be invoked for confirmation of the adjudged demand beyond the normal period prescribed under the statute.

1.2. On perusal of the case records and consideration of the submissions made by both sides, we are of the view that the present miscellaneous application filed by the applicant-appellant can be considered in the interest of justice. Accordingly, the said application is allowed and the submissions made therein are taken into records for hearing and disposal of the appeal.

2. In this case, the Ld. adjudicating authority has confirmed service tax demand of Rs.77,12,935/- & Rs.29,90,288/- along with interest, as proposed for recovery in the SCNs dated 19.09.2008

and 22.10.2008. Besides, the impugned order also imposed penalties under Section 76, 77 and 78 of the Finance Act, 1994 on the appellant. The adjudged demands were confirmed on the ground that cable subscription charges collected from the cable operators are taxable under the category of 'Business Auxiliary Service' and thus, appellant was liable for payment of service tax under such category of taxable service.

3. The Ld. Advocate appearing for the appellant submitted that the service tax liability had already been discharged by the principal service provider M/s Win Cable & Datacom Pvt. Ltd, Mumbai and as such, such liability cannot be fastened again on the appellant. He further submitted that the service tax liability in part has also been discharged by the appellant. In this context, he has referred to the details of challans enclosed in the appeal records. Further, the Ld. Advocate also pleaded that the adjudged demands confirmed by the department are barred by limitation of time, as per the provisions of Section 73 (1) *ibid*. He has relied upon the judgement of Hon'ble Supreme Court in the case of *Cosmic Dye Chemicals Vs. CCE* - 1995 (75) ELT 721 (SC), *CCE Vs. HMM Ltd.*- 1995 (76) ELT 497 (SC) and the decision of the Tribunal in the case of *CCE, Jaipur–II Vs. Sky Media Pvt. Ltd.,* reported in 2017 (11) TMI 1466 – CESTAT, New Delhi, to state that the extended period of limitation cannot be invoked for confirmation of the adjudged demands.

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

5. Heard both sides and examined the case records.

6. On perusal of the appeal records, we find that the appellant under the cover of its letter dated 01.05.2015, addressed to the Deputy Registrar of this Tribunal, had enclosed a statement showing the reference of challans, through which the service tax amount was deposited by it. Further, the said statement had also been

certified by the practising Chartered Accountant firm. However, the payment particulars reflected in such statement has not been considered by the Ld. Adjudicating Authority in the impugned order passed by him, owing to the reason that the payments were made by the appellant during the course of filing of appeal before the Tribunal and not at the adjudication stage. Thus, we are of the considered view that the matter should be remanded to the original authority for verification of the payment particulars made by the appellant. Further, the original authority should also examine the limitation aspect, as claimed by the appellant and for that purpose, should examine the above judgments and the CBEC circular relied upon by the appellant.

7. In view of above, the impugned order is set aside and the appeals are allowed by way of remand to the original authority for re-adjudication of the matter in the line with our above observations. Needless to say, that the opportunity of personal hearing should be granted to the appellant before deciding the matter afresh.

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

(S.K. Mohanty)
Member (Judicial)

(Sanjiv Srivastava)
Member (Judicial)

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