

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 86442 of 2016

(Arising out of Order-in-Original No.16/ST/2013/C dated 28.06.2013
passed by the Commissioner of Service Tax, Nagpur)

Essem Erectors

Sector D-90, CIDCO, Butibori,
Dist-Nagpur.

....Appellant

Versus

Commissioner of Central Excise, Nagpur

P.O. Box No.81, Telangkhedi Road,
Civil Lines, Nagpur- 440 001.

.... Respondent

APPEARANCE:

Shri Bharat Raichandani, Advocate for the Appellant

Shri Dhananjay Dahiwal, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/86863/2024

Date of Hearing: 24.10.2024

Date of Decision: 24.10.2024

Per: S.K. MOHANTY

The facts of the case are that M/s Bharat Heavy Electricals Ltd. (BHEL), in the present case, had awarded the contract for installation and commissioning of the Thermal Power Plant to M/s Sunil Hi-tech Engineers Ltd. Pursuant to such contract awarded by the ultimate service receiver, the main contractor M/s Sunil Hi-tech Engineers Ltd. had sub-contracted the assigned task to the present appellants M/s Essem Erectors. As a main contractor, M/s Sunil Hi-tech Engineers Ltd. had discharged the service tax liability on the entire amount of service rendered to the recipient of service i.e., BHEL. Since, the appellants herein did not pay service tax into the Central

Government account as a sub-contractor, the Department had issued the show cause notice, seeking for confirmation of the service tax demand. The matter arising out of the show cause notice dated 29.06.2012 was adjudicated vide order-in-original dated 02.07.2013, in confirming the service tax demand alongwith interest on the appellants. Besides the impugned order has also imposed penalties under Section 77 and 78 of the Finance Act, 1994. The show cause notice issued to the appellants had invoked the extended period of limitation, provided under Section 73 of the Act of 1994.

2. Heard both sides and examined the case records.

3. The issue with regard to levy and collection of service tax from the sub-contractor was highly contentious and there were divergent views expressed by the co-ordinate Benches of the Tribunal on such issue. Accordingly, the matter was referred to the Larger Bench and vide order dated 23.05.2019, the Larger Bench in the case of Commissioner of Service Tax, New Delhi Vs. Melange Developers Pvt. Ltd. 2019-TIOL-1684-CESTAT-DEL-LB has resolved the issue, holding that sub-contractor is also liable to pay the service tax, even though the main contractor has discharged such liability on the entire value of contract.

4. The appellant in this case, is not contesting the service tax demand confirmed against it, in view of the decision of the Larger Bench rendered in the case of Melange Developers Pvt. Ltd. (supra). However, the appellant has contended that since the issue was not free from doubt about collection of service tax from the sub-contractor, there is no element of fraud, collusion, mis-statement etc., for invoking the extended period of limitation for issuance of the show cause notice. In support of such contention, the appellant has relied upon the orders passed by the Co-ordinate Benches of the Tribunal, in the cases of M/s. Vinoth Shipping Services Vs. Commissioner of Central Excise and Service Tax, Tirunelveli – 2021-TIOL-555-CESTAT-MAD, Murari Lal Singhal Vs. Commissioner of Central Excise And Service Tax, Jaipur-I 2019-TIOL-2325-CESTAT-

DEL., Veejay Marketing Vs. Commissioner of Central Excise And Service Tax, Coimbatore -2018-TIOL-3387-CESTAT-MAD, Thakarshi J Likhiya Vs. Commissioner Of Central Excise & ST, Rajkot – 2023 (6) TMI 847-CESTAT-Ahmedabad and Space Impex Pvt. Ltd. Vs. C.C.E. & S.T. Rajkot – 2023 (9) TMI 523-CESTAT-Ahmedabad.

5. It is an admitted fact on record that the show cause notice dated 29.06.2012 had proposed for recovery of service tax from the appellant for the services provided during the period of 2007-08 to 2010-11 and for proposed effecting recovery, the proviso clause appended sub-section (1) of Section 73 *ibid* was invoked. Insofar as issuance of the show cause notice is concerned, the statute clearly mandates that the same should be issued within the normal period of one year from the relevant date. However, under exceptional circumstances, where there is involvement of fraud or collusion or willful mis-statement or suppression of facts or contravention of any of the provisions of this Chapter or of the Rules made there under with intent to evade payment of service tax, then in such cases instead of the normal period of 1 year, the show cause notice can be issued by invoking the extended period of limitation of 5 years. On reading of the said statutory provisions, it transpires that issuance of show cause notice within the normal period is the rule and the issuance of the same by invoking the extended period of limitation is the exception, such that exception clause would have the application only when the ingredients mentioned in the proviso clause to sub-section (1) of Section 73 *ibid* are satisfied. In the case in hand, it is an admitted fact that payment of service tax by sub-contractor was not free from doubt and thus, there were different views expressed by Co-ordinate Bench of the Tribunal, which are resulted in referral of matter to Larger Bench. Thus, under such circumstances, we are of the considered view that the service tax demand can only be raised within the normal period and since, the elements itemized in the proviso clause are absent, the extended period cannot be invoked. We find that the Co-ordinate Benches of the Tribunal in the judgements relied upon by the appellants have allowed the appeals on the ground of limitation.

6. Therefore, the impugned order, to the extent it has confirmed the adjudged demands under the extended period of limitation is set aside and the appeal to such extent, is allowed in the favour of the appellant.

(Order dictated and pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

SM