

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA**

REGIONAL BENCH - COURT NO.2

Service Tax Appeal No.75299 of 2023

(Arising out of Order-in-Original No.21/Pr.Commr./ST/GHY/2021-22 dated 16.02.2022 passed by Principal Commissioner, CGST & CX, Guwahati.)

Mr. Bikash Chakraborty

(Block I, B-5, Jagaband/Bhangagarh, G.S. Road, Guwahati, Kamrup-781005.)

...Appellant

VERSUS

Commissioner of CGST & CX, Guwahati Commissionerate

.....Respondent

(GST Bhawan, Kedar Road, Machkhowa, Guwahati-781001.)

APPEARANCE

Shri Ankit Kanodia, Advocate for the Appellant (s)

Shri A.Roy, Authorized Representative for the Revenue

CORAM: HON'BLE SHRI P.K. CHOUDHARY, MEMBER(JUDICIAL)

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

FINAL ORDER NO. 75867/2023

DATE OF HEARING : 27 June 2023

DATE OF DECISION : 28 June 2023

Per : P.K. CHOUDHARY :

The present appeal has been filed by the appellant against the adjudication Order-in-Original No. 21/PR. COMMR/ST/GHY/2021-22 dated 16/02/2022 passed by the Ld. Commissioner of CGST & CX., Guwahati Commissionerate by which the demand of service tax for FY 2015-16 was confirmed on account of difference in ST 3 return vs ITR filed by the Appellant.

2. The department had issued Show cause notice (SCN) to the appellant demanding payment of service tax based on ITR filed for FY 2015-16. The said SCN was adjudicated by the Ld. Commissioner by which the demand came to be confirmed as the appellant didn't file

any reply to the SCN and neither appeared before the authority. Hence the present appeal.

3. Heard both sides and perused the appeal records.

4. The case of the appellant is that it being engaged in government contracts it was not liable to be registered with the service tax department and hence there was NO ST 3 filed. In support, the appellant has relied upon the NO DUE CERTIFICATE DATED 16.12.2016 received from the service tax department for the alleged financial year 2015-16. Hence the appellant claims that no demand could have been made against the appellant for the said FY 2015-16 invoking extended period of limitation as the department was already aware of the business of the appellant. The appellant relied on the judgment of NIZAM SUGAR FACTORY Versus COLLECTOR OF CENTRAL EXCISE, A.P. (2006 (197) E.L.T. 465 (S.C.)) in this regard. The appellant also contended that no demand can be raised by invoking extended period of limitation for difference in ST 3 and ITR returns as has been held by the Tribunal in various decisions such as :

- a. . I Jesudasan vs. CCE 2015 (38) S.T. R 1099 (Tri.Chennai).
- b. Alp Management Consultant P. Ltd vs. CST 2006 (4) STR 21 (Tri.Bang).
- c. Tempest Advertising (P) Ltd. v. CCE 2007 (5) STR 312 (Tri. -Bang.).
- d. Turret Industrial Security vs. CCE 2008 (9) S.T.R. 564 (Tri-Kolkata).
- e. Kush Constructions Vs. CGST NACIN 2019 (24) GSTL 606 (Tri – All)

5. We find that the appellant's business was scrutinised by the service tax department for FY 2015-16 for which a NO DUE certificate was already issued to the appellant by the same service tax department based on ITR filings on 2016. Thus, issuance of present SCN by the department in 2021 based on the same ITR findings cannot be sustained as the department was already in knowledge of the activities of the Appellant and had also given a no due certificate to the appellant. We find that for issuance of SCN involving extended period of limitation, suppression has to be brought on record which

has not been done in this case by the revenue. Though the appellant had not appeared in the adjudication proceedings, yet the certificate issued by the department in 2016 clearly establishes that the records were already scrutinised by the revenue in 2016 itself and hence we are unable to persuade ourselves as to how the same department can invoke extended period of limitation to confirm the demand for the same year.

6. We thus set aside the impugned order dated 16.02.2022 on grounds of limitation itself and the appeal stands allowed, with consequential benefits as per law.

(Order pronounced in the open court on 28 June 2023.)

Sd/
(P.K. CHOUDHARY)
MEMBER (JUDICIAL)

Sd/
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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