NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

TAXC No. 41 of 2017

(Arising out of judgment/order dated 19/09/2016 in Appeal No.ST/876/2010 and Appeal No. ST/52839/2014 by the Customs, Excise, Service Tax Appellate Tribunal, New Delhi)

Commissioner, Central Excise, Customs & Service Tax Bilaspur, At Central Excise Bhawan, Tikrapara, Dhamtari Road, Raipur, Chhattisgarh

---- **Appellant**

Versus

M/s National Project Construction Corporation Ltd. Unit Office, Sipat, P.O. Sipat, District Bilaspur, Chhattisgarh

---- **Respondent**

For Appellant : Shri Vinay Pandey, Advocate
For Respondent : Shri Sharad Mishra, Advocate

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice

Hon'ble Shri Sharad Kumar Gupta, Judge

Order On Board

Per Thottathil B. Radhakrishnan, Chief Justice

13/09/2017

1. The Revenue is in appeal against the order of Customs, Excise, Service Tax Appellate Tribunal, for short, 'CESTAT' in so far as it confirms an issue relatable to a show cause notice dated 26/05/2009. Hearing the learned counsel for the Revenue and the learned counsel for the respondent, we see, that, by and large, the consideration of that issue is confined to what is reflected in paragraph 7 of the impugned order of the Tribunal rendered on 19/09/2016 which reads as follows:-

> “7. It is on record that the first SCN was issued on 26.05.2009 involving the extended period of limitation. In

> the light of the law laid down by the Apex Court in the Nizam Sugar case, the Department is precluded from issuing another SCN invoking the extended period. Consequently we make it clear that the demand raised in the second SCN dated 19.04.2011 does not survive even the *denovo* proceedings beyond the normal time limit under Section 73 of the F.A. 1994."

2. On the basis of the submission by the learned counsel on behalf of the Revenue the following substantial question of law is formulated:

> Did the Tribunal Act in accordance with law in applying the ratio of the judgment in **Nizam Sugar Factory vs. Collector of Central Excise, AP, 2006 (197) E.L.T. 465 (SC)** without reference to the facts of that case *qua* the facts relevant to consider whether the proceedings relatable to the show cause notice dated 26/05/2009, in the case in hand, was barred by limitation?

3. It is pointed out that the assessee was registered with the department on 10/04/2012. The first show cause notice dated 26/05/2009 related to the period from 10/09/2004 to 24/03/2008. One of the moot questions that would be relevant in such matters is as to whether the department could be attributed with knowledge of the transactions and the nature of activities of the assessee which could have led to the issuance of a show cause notice. The said issue of fact and different other issues which may be germane ought to have been considered on the facts of

a given case. Even if the ratio of **Nizam's Sugar** case (supra) is to be applied, the authority concerned has to be satisfied that the facts of the instant case stand covered on issues of law relatable to the ratio of the precedent handed down in **Nizam's** case. This obviously means that the findings rendered in paragraph 7 of the impugned order, as quoted above, is sufficient enough to demonstrate that the ratio of Nizam's case has been applied apparently without appreciating the relevance of that decision to the facts of the case in hand. Taking stock of the entire issues which were considered by the Tribunal through the impugned order, we are of the view that ends of justice require a remand of all issues concerned, having regard to the conclusion arrived at the Tribunal.

4. For the aforesaid reasons, the substantial question of law formulated herein above is answered in favour of the Revenue and the finding and the order in the impugned decision the Tribunal in so far as they relate to the first show cause notice dated 26/05/2009 are vacated and such issue will also stand remitted by the force of this judgment to the same authority to whom the order of remand has been made by the Tribunal. Appeal ordered accordingly.

Sd/- Sd/-

(Thottathil B. Radhakrishnan)
Chief Justice

(Sharad Kumar Gupta)
Judge

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