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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**ORDINARY ORIGINAL CIVIL JURISDICTION**

**CENTRAL EXCISE APPEAL NO. 184 OF 2015**

M/s. Rizwan Travels …Appellants
*Versus*
The Commissioner of Central Excise, Raigad …Respondents

**WITH**

**CENTRAL EXCISE APPEAL NO. 185 OF 2015**

M/s. Vaibhav Travels …Appellants
*Versus*
The Commissioner of Central Excise, Raigad …Respondents

**WITH**

**CENTRAL EXCISE APPEAL NO. 186 OF 2015**

M/s. Sanobar Travels …Appellants
*Versus*
The Commissioner of Central Excise, Raigad …Respondents

Mr. Rajan Mishra, i/b Mr. Mihir P. Deshmukh, for Appellants in all matters.

Mr. M. Dwivedi, with Ms. Shalaka Gujar for Respondents in all matters.

**CORAM: A.S. OKA AND**
**RIYAZ I. CHAGLA, JJ.**
**DATED: 21st August 2017**

**PC:-**

1. It is not in dispute that the facts of these three Appeals are more or less similar.

2. These three Appeals take an exception to a common judgment delivered by the Customs, Excise and Service Tax Appellate Tribunal (for short "**Appellate Tribunal**"). The Appellants in these three Appeals had rented their vehicles to a company Indian Petrochemicals Corporation Ltd., ("**I.P.C.L.**") Village – Nagothane, District Raigad on annual contract basis. The case of the Appellants is that they got themselves registered under service tax. Therefore, three show cause notices were issued to the Appellants proposing recovery of service tax for the period from October 2002 to March 2004. On 8th September 2004, the Appellants received show cause notices for the period between April 2000 to December 2002. The notices also make a claim for recovery of interest and penalties under Sections 76, 77 and 78 of the Finance Act, 1994. According to the case of the Revenue, the Appellants did not respond to the notices and did not appear for personal hearing. Therefore, the demands

were confirmed along with interest thereon and penalties were imposed as proposed. Being aggrieved by the confirmation of demands, the Appellants preferred separate Appeals before the Commissioner of Central Excise (Appeals), Mumbai Zone. The said Appeals were dismissed. Being aggrieved by the judgment and order of the Appellate Authority, the Appellants preferred three Appeals before Appellate Tribunal. By the impugned Judgment and order, the Appeals have been dismissed.

3. We may note here that in paragraph 5.1 of the impugned judgment, the Appellate Tribunal has observed thus :-

> ***"5.1. The appellants have admitted that they are not contesting the issue on merits but only on account of time-bar. They have taken two pleas in support of this argument. The first plea is that there was a CESTAT decision in the case of Kuldeep Singh Gill dated 12th May 2005 which held that service tax was not payable on renting of cabs which was subsequently reversed by the Hon'ble Punjab and Haryana High Court. The second ground taken is that since two show cause notices have been issued prior to the impugned notices the department was aware of the activities of the appellant and hence the extended period of time could not have been invoked.***

4. As learned counsel for the Appellants wanted to argue on various aspects in addition to issue of time bar, on the last date, we have granted time to the learned counsel appearing for the Appellants to take instructions, in view of what is specifically recorded in 5.1 as quoted earlier. Paragraph 5.1 records a statement of the Appellants that they are not contesting issue on merits but only on the ground of time bar. Today, learned counsel appearing for the Appellants submitted that in fact submissions were canvassed not only on the issue of time bar but also on merits. We may note here that the submissions of the learned counsel appearing for the Appellants have been elaborately noted in paragraph 3 of the impugned judgment, which show that the challenge was confined only on the ground of time bar and no other point was argued.

5. The law is fairly well settled. If the Appellants want to contend that some other submissions were canvassed before the Appellate Tribunal and that the same have not been noted and considered, the only remedy available to the Appellants is to approach Appellate Tribunal by filing appropriate

proceedings. It is not open for the Appellants to argue before this Court that the certain other submissions were canvassed which have not been recorded by the Appellate Tribunal. As far as this Court is concerned, it will have to proceed on the footing that the submissions which are recorded in paragraph 3 of the impugned judgment have been correctly recorded. Therefore, we have permitted the learned counsel appearing for the Appellants to make submissions only on the ground of time bar.

6. The submission of the learned counsel appearing for the Appellants is that prior to service of show cause notices dated 8th September 2004, all the three Appellants were served with two show cause notices each in the year 2003. The learned counsel appearing for the Appellants submitted that in case of Appellants in Central Excise Appeal No. 184 of 2015, one more show cause notice was served on 16th June 2004. He, therefore, submitted that in view of the earlier notices, by show cause notices dated 8th September 2004, the Revenue could not invoke extended period of time and hence, the demand made by the said notices were time

barred.

7. We have given careful consideration to the submissions. As far as Appellant in Central Excise Appeal No. 184 of 2015 is concerned, from paragraph 3 of the impugned judgment, it appears that there is no argument canvassed based on show cause notice of 16th June, 2004 and arguments were confined to show cause notices dated 11th August 2003 and 3rd December 2003,

8. The Appellants had placed reliance on a decision of the Appellate Tribunal in the case of ***Kuldeep Singh Gill Vs. Commissioner of Central Excise***[1]. The Appellate Tribunal noted that the decision in the case of ***Kuldeep Singh (Supra)***, was rendered on 12th May 2005. The show causes notices were issued on 8th September 2004. Therefore, there is no question of Appellants *bona fide believing* that they were not liable to pay service tax during the period from April 2000 to December 2002. There is a finding of fact recorded in paragraph 5.2 by the Appellate Tribunal that no other

1 2005 (186) ELT 373.

defence was pressed in to service by the Appellants to show that they were under a *bona fide* belief about non-taxability of the service.

9. As regards the earlier show cause notices, the Appellate Tribunal has referred to show cause notices issued on 28th February 1984 and 16th July 1987. The Appellate Tribunal has referred to two show cause notices issued to the Appellant in the year 2003 and held that the show cause notices were for non-filing of half yearly returns for the period between December 2002 to March 2003 and for recovery of service tax. In fact, it is noted that show cause notices dated 3rd December 2003 and 5th January 2004 were for non-filing of the half yearly returns for the period from April 2003 to September 2003 and for recovery of service tax without specifying the demand. As a matter of fact, it is recorded that the show cause notices issued on 8th September 2004 were for recovery of service tax for the period from April 2000 to December 2002.

10. It is found on the basis of material on record by the

Appellate Tribunal that the Appellants did not furnish information relating to consideration received in spite of four summonses issued on March 2003, November 2003, March 2004 and July 2004. The documents specified in the summonses were not produced and therefore, revenue was required to obtain details from I.P.C.L., Nagothane. After obtaining the information from the said Company, the impugned notices dated 8th September 2004 were issued. A finding of fact has been recorded that non-filing of documents as required by summons and non appearance before the authorities is a deliberate violation of law and, therefore, the charge of suppression of facts is clearly borne out from the conduct of the Appellants. It was held that the notices issued on 8th September 2004 were not in continuation of notices for the previous period. The finding of fact is that, the notices issued on 8th September 2004 were not based on identical facts or identical evidences. In view of the aforesaid findings of fact recorded by the Appellate Tribunal, it was held that demand is not barred by limitation. The factual findings recorded by the Appellate Tribunal for holding that the demand was not barred by limitation are based on material on record. Therefore, no substantial question of law arises in three Appeals.

11. Accordingly, the Appeals are dismissed with no order as to costs.

**( RIYAZ I. CHAGLA J. )** **( A.S. OKA, J )**