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

CENTRAL EXCISE APPEAL NO. 133 OF 2017

The Commissioner of Service Tax … Appellant
Versus
M/s. Albatross Marine Services …Respondent

Ms. P.S. Cardozo, for the Appellant.

CORAM: M.S.SANKLECHA &
RIYAZ I. CHAGLA, JJ.
DATED: 28TH AUGUST, 2018

PC:-

1. This Appeal under Section 83 of the Finance Act, 1944 read with Section 35G of the Central Excise Act, 1944 challenges the order dated 2nd September, 2015 passed by the Customs, Excise and Service Tax Appellate Tribunal (Tribunal)

2. The Appellant urges the following question of law for our consideration:-

> *"Whether the Tribunal was right in holding that the show cause notice dated 31/01/2008 demanding the service tax liability of the period July 2005 to March 2007 is hit by limitation?*

3. The impugned order of the Tribunal on merits has held that the Respondent is engaged in supply of personnel to Shipping Corporation of India Ltd. and its service is taxable under

Manpower Recruitment and Supply Agency Services, during the material period between July, 2005 to March, 2007.

4. However, the impugned order holds that the show cause notice issued on 31st January, 2008 seeking to recover service tax for the period between July, 2005 to March 2007 is barred by limitation. This as the extended period is not invocable for the reason that the Appellant had given a detailed write up regarding the nature of work carried out as well as furnished copies of various documents including contract / agreements / copies of invoices detailed write up as far back as June, 2004 when asked by Superintendent of Central Excise. The impugned order on finding of fact holds that the Respondent had informed the department that the amounts received by them from the Shipping Corporation of India Ltd. by way of salaries / wages payable to the staff supplied to them has in fact paid over to them and not included it in the service charges. It paid tax on only service charges which were received by them.

5. Ms. Cardozo, the learned counsel in support of the Revenue states that, the Respondent has failed to discharge the necessary burden that it was acting under a *bonafide* belief.

6. We find that view taken by the Tribunal on facts is a possible view on facts. Nothing has been shown to us that the

finding of fact arrived at by Tribunal is perverse. The impugned order records that earlier correspondence between Respondent and Appellant which establishes complete disclosure on the part of the Respondent of its activities and its *bonafide* belief that no tax was payable in respect of the wages / salaries etc. received from the shipping Corporation of India which were paid to the workers which were supplied by them.

7. In the above view, the question as proposed does not give rise to any substantial questions of law as the finding is on facts.

8. Accordingly, Appeal is dismissed.

(RIYAZ I. CHAGLA J.) **(M.S.SANKLECHA, J.)**