IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CENTRAL EXCISE APPEAL NO. 55 OF 2019

The Commissioner of CGST &
Central Excise, Mumbai - West .. Appellant.
vs.
Prompt Personnel Consultancy
Service Pvt. Ltd. .. Respondent.

Mr.Sham Walve a/w. Mr. Ram Ochani for the Appellant.

CORAM: M.S. SANKLECHA, J.
AND M.S.SONAK, J.
DATE : 11 JUNE 2019.

P.C.:

1] This appeal under Section 83 of the Finance Act, 1994 read with Section 35G of the Central Excise Act, 1944 challenges the order dated 7th May 2018 passed by the Customs, Excise and Service Tax Appellate Tribunal, Mumbai (Tribunal).

2] The Revenue urges the following question of law for our consideration:

> *"Q. Whether in the facts and circumstances of the case and in law, the Tribunal was justified in holding that the extended period of limitation under Section 78(1) of the Finance Act, 1994 would not apply ?"*

3] During the period January 2007 to November 2009, the respondent who was registered under the category of Manpower Recruitment or Supply Agency Services had provided taxable service to various clients. The respondent paid service tax payable on the wages paid to its employees. However, over and above the amount of wages, the respondent also collected 41% levy from the contractee and deposited the said amount with Gorcery Markets and Shop Board. The respondent had earlier by letter dated 19th September 2006 addressed to the Jurisdictional Dy. Commissioner of Service Tax explained its entire activity, and *inter alia,* pointed out that the 41% levy paid to Gorcery Markets and Shop Board would not be a part of its taxable value for payment of service tax.

4] Nevertheless, the appellant – Revenue issued a Show Cause Notice dated 19th April 2012 seeking to recover service tax on 41% levy collected by the respondent from the contractee for the period January 2007 to November 2009. This by alleging suppression on the part of the respondent. The impugned order of the Tribunal *inter alia* records the fact that in September 2006, i.e. prior to commencement of the period for which the demand is being made, the respondent had informed the Department that it is not obliged to pay service tax on additional 41% collected from the contractee to be paid over to Grocery and Markets and Shop Board. Thus, the impugned order holds that in the above context, it can hardly be suggested that there was any suppression on the part of the respondent, which warrants the issuing the Show Cause Notice invoking the extended period of limitation.. In these circumstances, the impugned order holds that the demand is barred by limitation.

5] Mr. Walve, learned counsel appearing for the appellant, submits that the aforesaid letter dated 19th September 2006 was addressed to Jurisdictional Dy. Commissioner much before the period for which suppression is being alleged. Thus, it cannot absolve the respondent from the guilt of suppression of facts so as to invoke the extended period of limitation.

6] We note that the period involved in the present Show Cause Notice is from January 2007 to November 2009. The intimation given to the Department on 19th September 2006, i.e., just before the period for which the demand has been raised. Thus, the Department was at all times during the period for which the demand has been raised were aware of the declaration made by the respondent that they will not be liable to pay the service tax on 41% levy collected from the contractee and paid over to the Grocerty Market and Shop Board. In these circumstances, the finding of fact arrived in the impugned order of the Tribunal is that there has been no suppression of facts invoke the extended period of limitation cannot be said to be perverse.

7] In the above view, the question as proposed does not give any rise to substantial question of law and thus not entertained.

8] Accordingly, the appeal is dismissed.

(M.S.SONAK, J.) **(M.S.SANKLECHA, J.)**