OD-31

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction (Central Excise)
ORIGINAL SIDE

IA NO: GA/1/2022, GA/2/2022
In
CEXA/7/2022
COMMISSIONER OF CENTRAL EXCISE AND SERVICE TAX, BOLPUR
Versus
BAKRESHWAR COOPERATIVE MULTIPURPOSE SOCIETY

BEFORE:
The Hon'ble JUSTICE T.S. SIVAGNANAM
-And-
The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA
Date : 17th May, 2022.

Mr. S. Ganguly, Ms. Aishwarya Rajyashree, Advocates…for appellant.
Mr. N. K. Chowdhury, Mr. Nilotpal Chowdhury, Advocates…for the respondent.

RE: GA/1/2022
CEXA/7/2022

The Court : Heard learned counsel for the parties.

There is a delay of 970 days in filing the appeal. The prayer for condonation of delay is vehemently opposed by the learned advocate for the respondent/assessee. However, we are conscious of the fact that the appeal has been preferred under section 35G of the Central Excise Act, 1944 [the Act, in brevity] and we are required to consider as to whether any substantial question of law arises for considertion and if we find that there is a substantial question of law, then we are required to answer the question of law and, therefore, rejection of the prayer for condonation of delay may not serve the ends of justice, more particularly, the case in hand. Therefore, despite vehement objection by the learned Advocate for the respondent, we exercise discretion and condone the delay in filing the appeal. Accordingly, the aplication for condonation of delay being GA/1/2022 is allowed.

RE: CEXA/7/2022

This appeal, filed under section 34G of the Central Excise Act, 1944 [the Act, in brevity], is directed against the order dated 2nd January, 2019 passed by the Customs, Excise and Service Tax Appellate Tribunal, Eastern Zone, Kolkata, in appeal being ST/260/2012. The revenue has raised the following substantial questions of law for consideration :

I. *Whether the findings of the Learned Tribunal, being the last fact finding authority, is perverse as the Learned Tribunal has accepted the contention of the assesses/respondent herein without any evidences as regards to the fact that the assessee has shown the entire amount in ST-3 return as "Amount billed gross" when contrary the findings of the department is that the total amount of 'sale bills' is much higher than the "Amount billed gross" shown in ST-3 return which arises suppression of material facts by the assesses/respondent herein ?*

II. *Whether on the facts and Circumstances of the instant case, the Learned Tribunal is right in holding that the extended period of limitation is not available to the Revenue/appellant herein ?*

Heard learned counsel for the parties.

The respondent/assessee is a cooperative society and was issued with show cause notice alleging contravention of the provisions of Sections 66, 67 and 68 of the Finance Act, 1994 read with Rules 5 and 6 of the Service Tax Rules, 1994 on the ground that they have failed to pay service tax on the amount indicated on the value of the taxable services under the category of "Man Power Recruitment or Supply Agency Service" classifiable under sub Section 105(k) of Section 65 of the Finance Act. The show cause notice was not issued solely at the instance of the department but the department was directed to issue the notice on account of audit objection which has been raised consequentially. The show cause notice was otherwise barred by limitation but for invoking the extended period of limitation. The appellant resisted the same and submitted their objection which was not considered by the Adjudicating Authority resulting in an order dated 7.3.2012 confirming the proposed sale made in the show cause notice and demanding service tax and also levying penalty. Before the learned Tribunal, the assessee contended that they were engaged in the supply of manpower to Bakreswar Thermal Power Project [BKTPP] and other contractor where the assessee acted as a sub-contractor. Further, the assessee contended that they have meticulously submitted ST-3 returns periodically and complying with the provisions of the Finance Act and at no stage any discrepancy was pointed out by the department nor any notice was issued. Further, it was contended that they being a cooperative society are engaged in social service in providing employment to local unemployed youth by providing manpower supply to various power projects including the main contractor. Further, the assessee contended that the Adjudicating Authority has adjudicated the balance-sheet figures in order to raise the disputed demand wherein it has adopted the figure of total service plus service charge for raising the demand and not with the basic value of service rendered. The assessee relied upon various decisions of the Hon'ble Supreme Court in support of their contention which have been noted by the learned Tribunal in paragraph 5 of the impugned order. Furthermore, the assessee contended that the disputed period is from 2006-07 to December, 2008 and the assessee having not been put on any notice earlier alleging any suppression, the question of invoking the extended period of limitation would not arise. The Tribunal heard the revenue on the above submissions made by the assessee. The Tribunal held that the assessee had been disclosing all the facts and having been promptly filing the ST-3 returns and show cause notice had been issued only on 8th November, 2011 for the period from 2006-07 to 2010-11 under section 73(1) and 83(2) of the Act for which the assessee had also submitted reply dated 30th September, 2011. Furthermore, an inquiry was conducted wherein the statement of the Chairman and Managing Director of the Company was recorded on 8th October, 2011. The Tribunal after considering the factual position held that the taxable value has been arrived at as per the sales bill for the relevant years and noted the fact. The appellant's contention was that the main contractor also paid service tax, which was not taken into consideration by the Adjudicating Authority. Therefore, the Tribunal on facts held that the extended period of limitation is not available to the Revenue and the demand is required to be limited to the normal period only. With the above findings, the matter has been remanded to the Adjudicating Authority to re-determine the duty liability in terms of the directions issued by the Tribunal.

Thus, we find that there is no question of law much less substantial question of law arising for consideration in this appeal.

For the above reasons, the appeal is dismissed. The application for stay being GA/2/2022 stands closed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

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