CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH : AHMEDABAD

REGIONAL BENCH - COURT NO. 3

SERVICE TAX Appeal No. 10993 of 2017-DB

[Arising out of Order-in-Original/Appeal No AHM-EXCIS-003-APP-252-16-17 dated 23.02.2017 passed by Commissioner of Central Excise and Service Tax-AHMEDABAD]

Fortune Builders .... **Appellant**
2nd Floor, F Fortune Empire,
Borisana Road Opp. Kashiram Party Plot Kalol
GANDHINAGAR, GUJARAT

VERSUS

Commissioner of Central Excise & ST, Ahmedabad .... **Respondent**
7 Th Floor, Central Excise Bhawan, Nr. Polytechnic
Central Excise Bhavan, Ambawadi, Ahmedabad,
Gujarat -380015

APPEARANCE :

Shri Vipul Khandar, Chartered Accountant for the Appellant
Shri Himanshu P Shrimali, Superintendent (AR) for the Respondent

CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. C.L. MAHAR, MEMBER (TECHNICAL)

DATE OF HEARING /DECISION: 15.07.2024

FINAL ORDER NO. 11613/2024

RAMESH NAIR :

Shri Vipul Khandar, learned Chartered Accountant appearing on behalf of the appellant, at the outset submits that, in identical facts in the appellant's own case, this Tribunal in Appeal No. ST/10889/2016-DB vide order No. 11327/2024 dated 14.06.2024 has remanded the matter to the Adjudicating Authority. He submits that this matter may also be decided by Adjudicating Authority on the same lines as observed in the order dated 14.06.2024.

2. Learned AR appearing for the Revenue has no objection if the matter is remanded.

3. Considering the submissions made by both the sides and perusal of record, we find that in the appellant's own case, for the previous period, vide

order dated 14.06.2024 has remanded the matter, which is reproduced below:-

> "In the present case the demand was raised under the head of GTA service on the basis of one account head as transportation expenses shown in the books of account of the appellant.
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> 2. Shri Vipul Khandhar, Learned Chartered Accountant filed a detailed submission dated 15 February, 2024. He at the outset submits that under the head of transportation expenses, it is not merely freight of transportation charges but in majority of cases the value of the sand supplied by this transport was accountant for. Therefore, it does not represent the transportation charges but it is payment made for purchase of sand. Moreover, in certain cases the amount received even if considered against GTA the same shall not be taxable for the reason that the transportation expenses is below Rs.750/-. In some cases, the transportation was provided by individual transporter which is not liable to service Tax.
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> 2.1 He also submits that in cases where bills are of transport expenses, the transporter have already discharged the service tax on it. The Service tax on the same transportation will not sustain. On the query from the bench, he submits that this factual aspects have not been considered by the Adjudicating Authority.
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> 3. Shri Anoop Kumar Mudvel, Learned Superintendent (AR) appearing for the revenue reiterates the finding of the impugned order.
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> 3.1 He further submits that it is a clear finding in the impugned order that the appellant have not produced documents in support of their claim that the part of the transport expense is against purchase of goods, less than Rs. 750/- and the service tax was paid by the transporter.
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> 4. On careful consideration of the submission made by both the sides and perusal of record, we find that the Revenue has demanded the service tax on the transportation expenses shown in the books of account of the appellant. However, appellant have taken a stand that this transportation expenses is not entirely of transportation charges but majority of amount represent the purchase value of the sand. It is also submitted by appellant that in some cases the amount is less than Rs.750/- and in some cases transporters have paid the service tax. However, all these aspects have not been considered by the Adjudicating Authority. Therefore, the matter needs to be remanded

> to the Adjudicating Authority for re-consideration of the entire case including the issue on limitation.
>
> 5. Hence, the impugned order is set aside. Appeal is allowed by way of remand to the Adjudicating Authority."

4. In view of the above decision, since the same facts involved in the present case also, we are of the view that matter should go back to the Adjudicating Authority to decide both the cases together by considering the observations made in order dated 14.06.2024. Hence the impugned order is set-aside and the appeal is allowed by way of remand to the Adjudicating Authority.

(Dictated and pronounced in the open court)

(Ramesh Nair)
Member (Judicial)

(C L Mahar)
Member (Technical)

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