

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE  
TRIBUNAL  
REGIONAL BENCH : ALLAHABAD  
COURT No. I**

**APPEAL No. ST/70847/2016-CU[DB]**

(Arising out of Order-in-Appeal No.377-ST/APPL-LKO/LKO/2016 dated 13/05/2016 passed by Commissioner (Appeals), Customs, Central Excise & Service Tax, Lucknow)

**M/s Sushant Kumar Mukherjee, Proprietor**

**Appellant**

Vs.

**Commissioner of Central Excise  
& Service Tax, Lucknow**

**Respondent**

Appearance:

Shri Dushyant Kumar (Consultant)

for Appellant

Shri Sandeep Kumar Singh (Dy. Commr.) AR

for Respondent

**CORAM:**

**Hon'ble Mrs. Archana Wadhwa, Member (Judicial)**

**Hon'ble Mr. Anil G. Shakkwarwar, Member (Technical)**

Date of Hearing : 06/12/2018

Date of Decision : 06/12/2018

FINAL ORDER NO. - **72823/2018**

**Per: Archana Wadhwa**

After hearing both the sides and after going through the impugned order, we find that the demand of service tax stands confirmed against the appellant, who were engaged in providing the advertising materials to the newspaper, print media etc. and were discharging service tax on the 15% exemption received by them. The demand

stands raised on the scrutiny of the financial records of the assessee like ledger account, banks statement etc.

2. Commissioner (Appeals) while dealing with the said appeal of the appellant observed as under:-

*“6. At the outset, I find that the demand of service tax has been raised on the basis of deposits shown in the appellant’s Bank statement/P & L account/amount paid as per Form 26AS/bills for the corresponding years 2008-09 to 2012-13, whichever is higher, on full value (without abatement, if any). From perusal of the notice as well as order itself, it is not clear under which specific category of taxable service the said demand has been calculated and confirmed by the respective authority. Therefore, to have the department’s view on this anomaly, the Additional Commissioner, Central Excise, Lucknow was asked vide this office letter dated 22.02.2016 to look into the correct factual and legal position of the matter and give a report on the actual demand of service tax. However, no reply to this query has been received as yet despite of reminder issued to him on 07.04.2016. Hence, having observed that no assistance from department is forthcoming, I am taking up the matter for finalization as per records on merit.*

*I find that the appellant neither submitted their defence reply to the SCN nor did they protest the allegation of the SCN during the personal hearing before the adjudicating authority. Rather, they assured to pay the tax liability in due course. I find that these submissions as well as the details/documents have been submitted for the first time before me at the appeal stage and these have neither been verified by the department nor been authenticated by the respective publishers. The evidence produced at the stage of appellate forum for*

*the first time cannot be accepted being a new plea not taken earlier either before the investigation of the adjudicating authority. In the present circumstances, I am not inclined to consider these documents for granting them any relief on that basis. Therefore, in view of my above findings, I uphold the demand of service tax to the tune of Rs.31,61,339/- alongwith interest payable thereon. The amount deposited at the time of filing subject appeal under provisions of Section 35 F of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994 is appropriated towards the dues of service tax upheld herein above.”*

3. As is seen from the above, the Appellate Authority has, in principle, agreed that the order impugned before him was lacking in so many issues inasmuch as the Revenue itself has not identified the specific category of taxable services. We further observe that the appellant, in support of their various pleas, have produced the documents before him, which were not produced before the Original Adjudicating Authority.

In this scenario, we are of the view that the Appellate Authority should have set aside the impugned order and remanded the matter to the Original Adjudicating Authority for verification of the various documents. Though it does not stand spelt out clearly in the order as to why the remand was not adopted by him, but it seems that by entertaining a view that

Commissioner (Appeals) has no powers to remand the matter, he might not have remanded the matter.

4. In any case and in any view of the matter, inasmuch as the Tribunal has power to remand, we deem it fit to set aside the impugned order and remand the matter to Original Adjudicating Authority for fresh decision. Needless to say that the appellant would place all the documents before Adjudicating Authority, in support of their contention, for which purpose the appellant would be given an opportunity.

5. The appeal is thus allowed by way of remand.

(Dictated & Pronounced in Court)

**Sd/-**  
**(Anil G. Shakkarwar)**  
**Member (Technical)**

**Sd/-**  
**(Archana Wadhwa)**  
**Member (Judicial)**

*Lks*