CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH – COURT NO.I

Service Tax COD Application No.70068 of 2019
In
Service Tax Appeal No.70089 of 2019

(Arising out of Order-in-Appeal No.MRT/EXCUS/000/APPL-MRT/346/2018-19 dated 01/11/2018 passed by Commissioner (Appeals), Central Goods & Service Tax, Meerut)

M/s Tarun Associates, **.....Appellant**

B-9, Krishna Plaza, Tejgarhi Chopla

Meerut

VERSUS

Commissioner (Appeals), Central Goods & Service Tax, Meerut **.....Respondent**

APPEARANCE:

Absent for Appellant
Shri Sandeep Kumar Singh, Authorized Representative for Respondent

CORAM :
Hon'ble Mrs. ARCHANA WADHWA, MEMBER (JUDICIAL)
Hon'ble Mr. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

DATE OF HEARING : 21 June, 2019
DATE OF DECISION : 21 June, 2019

MISCELLANEOUS No. **70179 / 2019**

FINAL ORDER NO. **71171 / 2019**

ARCHANA WADHWA

The delay of 6(Six) days in filing the present appeal is condoned.

2. Further we note that the appeal can be disposed of even in the absence of appellant inasmuch as a short issue of violation of principals of natural justice is involved.

3. On going through the impugned order, we find that the appellant had categorically contested the order of the Original Adjudicating Authority on the ground that the same stands passed by him without an effective opportunity of personal hearing. Even the defence reply of the appellant was not filed by them. The said plea of the appellant stands rejected by Commissioner (Appeals) on the ground that number of opportunities were given to the assessee but all the notices of hearing were received back as the appellant had not received the letter indicating the date, as such he has proceeded ahead to decide the matter on merits.

3. Without fixing responsibilities on either side, we note that the fact remains that the impugned order stands passed without there being any defence submissions of the assessee as also without hearing them. The principles of natural justice requires that the matter should be decided in a manner which is in accordance with law. We also note that the appellant have assailed the correct valuation of service tax as also the fact that if the service tax demand is being now confirmed against them they should be given the benefit of cenvat credit on various input services etc.

The Appellate Authority have not accepted the said plea of the assessee on the ground that availment of cenvat credit was not an issue in the show cause notice and as such cannot be dealt with. However, we find that the credit was claimed by the appellant in case the Revenue confirms the service tax on the output services. It is a fact that during the relevant period the appellant was not discharging its service tax liability and as such question of availment of credit does not arise. It is only when the demand stands raised against them, he would claim the cenvat credit as a part of his defence. As such the findings of Commissioner (Appeals), on the said issue also cannot be held to be sustainable.

4. In view of the forgoing, we deem it fit to set aside the impugned order and remand the matter to Original Adjudicating Authority for fresh decision after giving an opportunity to the appellant to put forth their case. Their plea of neutralizing final demand against the admissible cenvat credit would also be reconsidered by the authority. All other pleas are left open for the Adjudicating Authority to re-decide in *de novo* proceedings.

5. Appeal is disposed of in above terms. COD application also gets disposed of in above terms.

(Dictated and Pronounced in open Court)

Sd/-
(Archana Wadhwa)
Member (Judicial)

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

nihal