CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE

Appeal(s) Involved:

ST/87/2007-DB

[Arising out of Order-in-Appeal No. 10/2007-CE dated 08/01/2007 passed by the Commissioner of Central Excise (Appeals), Mangalore.]

M/s. Ace Financial Services
Mallikatta Centre, Kadri,
Mangalore – 575 002.

Appellant(s)

Versus

Commissioner of Central Excise and Service Tax Mangalore
7th FLOOR, TRADE CENTRE,
BUNTS HOSTEL RD.,
MANGALORE, - 575003
KARNATAKA

Respondent(s)

Appearance:

Mr. M.S. NAGARAJA , Advocate
T. RAJESWARA SASTRY & ASSOCIATAES.
NO.1010, 2ND FLOOR,
ABOVE CORP.BANK, 26TH MAIN,
4TH T BLOCK, JAYANAGAR
BANGALORE - 560 041
KARNATAKA

For the Appellant

Dr. J. Harish, AR

For the Respondent

Date of Hearing: 18/04/2018
Date of Decision: 18/04/2018

CORAM:

HON'BLE MR. S.S GARG, JUDICIAL MEMBER
HON'BLE MR. DEVENDER SINGH, TECHNICAL MEMBER

Final Order No. 20594 / 2018

Per : DEVENDER SINGH

Briefly the facts of the case are that the appellant is a direct selling agent of ICICI Bank. Revenue felt that appellant was providing taxable services under the category of 'Business Auxiliary Service' without obtaining service tax registration and without payment of service tax. A show-cause notice was issued for the period from July 2003 to December 2004 proposing demand of Rs.5,63,983/- along with interest and also proposing penalties under various Sections of the Finance Act, 1994. The matter was adjudicated resulting in confirmation of Rs.2,42,795/- along with interest and imposition of penalties under Sections 76, 77 and 78 of the Finance Act, 1994. Appellant went in appeal against the order of the adjudicating authority. However, their appeal was rejected by Commissioner (A), aggrieved from which, they filed this appeal.

2. Learned Advocate for the appellant submits that they are providing only the service of evaluation of prospective customers/client to the ICICI Bank and have not provided any other services. The contention is that the service outsourced by ICICI Bank is liable to service tax under 'Business Support' Service w.e.f. 1.5.2006. He also pleaded that the findings of the Commissioner (A) that they had not contested the demand under

the category of 'Business Auxiliary Service' was not correct. In this regard, he referred to their submissions made before the Commissioner (A) in which they had contested the demand prior to 10.9.2004.

3. The learned AR reiterated the findings in the order of the Commissioner (A).

4. After hearing both the sides and perusing the records, we find that the first appellate authority has given a finding that the appellants have admitted their liability under the category of 'Business Auxiliary Service' provider and do not dispute the confirmation of demand and interest. However, we find from the pleadings and oral submissions of the appellant that they had nowhere admitted their liability before 10.9.2004 and had in fact contested it in their grounds of appeal before the Commissioner (A). The learned advocate also clarified that their present challenge is also on the merits of the case as well as on the penalties. In view of the above, we find that the first appellate authority has not given any analysis and findings on the merits of the issue, which was raised in the show-cause notice and which was adjudicated by the adjudicating authority. In this background, it would be in the interest of justice that the matter

is remanded back to the Commissioner (A) to give reasoned analysis and findings on the contentions of the appellant with regard to merit of the issues alleged in the show-cause notice and confirmed in the adjudication order. All the issues are kept open. Needless to say that the appellant will be given an opportunity to defend their case.

5. The appeal is disposed of by way of remand to the Commissioner (A) in above terms.

(Operative portion of the Order pronounced
in Court on **18/04/2018.**)

S.S GARG
JUDICIAL MEMBER

DEVENDER SINGH
TECHNICAL MEMBER

rv...