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

Application No.ST/Misc/CT/41711/2017 &
Appeal No.ST/759/2010

[Arising out of Order-in-Original No.LTUC/281/2010-(C) dt. 7.9.2010 passed by Commissioner of Central Excise & ST, LTU, Chennai]

Sify Technologies Ltd. — Appellant

Versus

Commissioner of GST & Central Excise
Chennai South Commissionerate
Chennai — Respondent

Appearance :

Shri G. Natarajan, Advocate
For the Appellant

Shri K. Veerabhadra Reddy, JC (AR)
For the Respondent

CORAM :

Hon'ble Ms. Sulekha Beevi C.S. Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of hearing / decision : 09.04.2018

FINAL ORDER No. 41084 / 2018

Per Bench

The MA filed by Revenue for change of cause title is allowed.

2. The facts of the case are that appellants are providing various taxable services such as internet cafe service, leased circuit service, franchise service etc. Scrutiny of ST-3 returns and records maintained by the appellants indicated that they had not discharged service tax liability in full for the period October 2005 to March 2006. The main allegation was that service tax paid by the tax payer as shown in the ST-3 returns for this period was less than the tax payable as calculated on the value shown in the same ST-3 returns by them for the impugned period. When the appellants had submitted that the difference in service tax payable alleged in the notice was due to the fact that they had wrongly indicated the taxable value in the ST-3 returns for the impugned period as inclusive of service tax which had resulted in calculation of service tax on the value including the tax. In the first round of adjudication, the adjudicating authority confirmed demand of service tax amount of Rs.1,86,23,877/- with interest thereon and also imposed penalty of Rs.2,00,00,000/- under Section 78 of the Finance Act, 1994. On appeal, CESTAT Chennai vide a Final Order No.657/2009 dt. 04.06.2009 remanded the matter for fresh adjudication with directions inter alia, for full reconciliation after allowing the appellants adequate opportunity for presenting their case. In such de novo adjudication,

by an order dt. 07.09.2010 (impugned order), the Commissioner has confirmed the same demand of Rs.1,86,23,677/- with interest and imposed same penalty of Rs.2 Crores under Section 78 ibid. Hence this appeal.

3. Today when the matter came up for hearing, on behalf of the appellants, Ld. Advocate Shri G. Natarajan submits that in de novo adjudication, appellants had furnished voluminous data, which has been taken cognizance of in the impugned order too. However, without examining the correctness of the data furnished by the appellants, the Commissioner has compared the data furnished before him in de novo proceedings, to those furnished in the first round and observed certain differences, based on which he has discredited the entire information furnished by the appellants. Ld. Counsel also contends that department has not proved that the appellants had received higher taxable value than what was declared in the ST-3 returns. He submits that the demand has resulted only due to misunderstanding of the new format of ST-3 which was made applicable from October 2005; that in the old format in Column (3), the tax payer was only required to indicate "*value of taxable service charged or billed (indicate break up of the amount month wise)",* whereas in the new format, in Column (1), the assessee was required

to give details of “*amount received towards taxable service/s provided”*. Ld. Advocate submits that incomplete appreciation of the new format many assessees, like them had indicated that the total value including the value on tax paid or suffered in Column (1) of the new format. The department has however taken that value as the value of taxable value of services and has demanded service tax liability on the purported incremental revenue. Ld. Advocate makes a plea that the matter may be remanded with specific directions to the adjudicating authority to cause reconciliation only with regard to data submitted by the appellants on 07.07.2010. He also contends that as the entire proceedings have emanated only due to the misreading of the ST-3 returns filed by the appellants, there is no justification for imposition of penalty.

4. On the other hand, Ld. A.R Shri K. Veerabhadra Reddy draws our attention to para-15 of the impugned order to point out that appellants vide their letter dt. 7.7.2010 had given figures which were different from those furnished vide their letter dt. 29.05.2007 in the first round of adjudication. Further, the adjudicating authority has observed that even comparison of figures furnished in the second round of adjudication reveals that there are still differences.

5. Heard both sides. From the impugned order, it is clear that the adjudicating authority has primarily focused on comparing the figures given by the appellants in the first and second round of adjudication. In the first round of litigation, CESTAT Chennai had clearly indicated that the adjudicating authority came to pass the impugned demand as the proper reconciliation exercise was avoided. The relevant portion containing these observations are reproduced for ready reference :

> "4. The appellants had furnished details of tax paid on the disputed services and their service tax liability under an enclosure to their reply to the Show Cause Notice on 29.5.2007. They paid an amount of Rs.24,99,432/- which was not actually necessarily. They have since filed a claim for refund of the same. The Commissioner found discrepancies between the particulars furnished by the appellants on 18.10.2006 and on 25.5.2007 which had arisen on account of the difficulties faced by the appellants in furnishing the correct figures. However, the Commissioner had not attempted to verify and ascertain the correct figures. The reconciliation between the two sets of figures cited would have been possible only if the details like realization from exempted services, realization from export of services, realization from sales, realization towards VAT/Sales Tax etc. were removed from the details furnished on 18.10.06. The Commissioner came to pass the impugned demand as the above exercise was avoided. The Commissioner found variations between the figures furnished along with the reply to the Show Cause Notice and those furnished in the ST-3 returns. However, the demand was raised ignoring one class of variations.
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> 5. The learned counsel for the appellants submits that the whole issue arose on account of certain errors in reporting which could be reconciled; the appellant was willing to do such reconciliation. He prayed that the impugned order may be set aside and the matter remanded for full scale reconciliation.

> 6. The learned Jt. CDR broadly agrees with the submissions made by the learned counsel for the appellants. He has no objection to the matter being remanded.
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> 7. On a careful consideration of the case records and the submissions made by both sides we are convinced that the ends of justice require that the impugned order be set aside and the matter remanded for fresh adjudication after allowing the appellants adequate opportunity for presenting their case. The appeal is thus allowed by way of remand."

We find that these directions of the CESTAT Chennai have evidently not been followed in the de novo adjudication. In the circumstances, while this Bench is averse to remand matters again and again, we are left with no other alternative but to once more send the matter back to the adjudicating authority to cause reconciliation as per the directions already given by the Tribunal in their earlier order dt. 04.06.2009, reproduced supra. It is also directed that the adjudicating authority will cause such reconciliation based on the figures and data provided by the appellants vide their letter dt. 07.07.2010 during the second round of adjudication.

6. Coming to the matter of penalty, discernably, the issue is on a matter of interpretation of the figure provided by the appellants. Whereas the appellants contend that they have mistakenly entered cum tax figures in Column (1) of the newly introduced ST-3 return. The department has initiated the demand on the basis that appellants

should have discharged service tax liability on the figures shown under that column. In the circumstances, there is definitely a case for waiver of penalty imposed under Section 78 since none of the ingredients which call for imposition of penalty under that section is present. In the event, penalty imposed under Section 78 is set aside. Matter is remanded to the adjudicating authority for de novo adjudication on the basis of directions supra.

7. Appeal is allowed by way of remand.

(dictated and pronounced in court)

(Madhu Mohan Damodhar)
Member (Technical)

(Sulekha Beevi C.S)
Member (Judicial)

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