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

ST/169/2009 (By Assessee)
ST/24/2008 (By Deptt.)

(Arising out of Order-in-Original No. 10/2008 (Commissioner) dated 22.12.2008 and department's appeal is against Order-in-Original No. 10/2007 (Commr) dated 12.12.2007 both passed by the Commissioner of Central Excise, Salem)

M/s. Mukesh & Associates
Commissioner of Central Excise, Salem Appellants

Vs.

Commissioner of Central Excise, Salem
M/s. Mukesh & Associates Respondents

Appearance

Ms. Minchu Mariam Punnose, Advocate for the Assessee
Shri A. Cletus, Addl. Commissioner (AR) for the Department

CORAM

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

Date of Hearing / Decision: **16.08.2017**

Final Order Nos. 41741-41742/2017

Per Bench

The appellant has filed the appeal against the order passed by the Commissioner of which the operative portion reads as under:-

(i) On the basis of the above discussions, I confine the demand of tax to the normal period of limitation. Of this,

Customs, Excise & Service Tax Appellate Tribunal for the period from 01.10.2005 to 18.04.2006, I order verification of documentary evidences produced by the noticee as to the deductions claimed by them from the taxable value as directed in para 21 of this order and in case any short payment is noticed, I order that the same shall be paid forthwith by M/s.Mukesh & Associates in terms of Section 73(2) of Chapter V of the Finance Act, 1994.

(ii) For the period from 19.04.2006 to 30.09.2006, I confirm and demand the differential Service Tax amounting to Rs.23,86,265/- (Rupees twenty three lakhs eighty six thousand two hundred and sixty five only) on the taxable services from M/s. Mukesh & Associates, Salem-4 under Section 73(2) of Chapter V of the Finance Act, 1994;

(iii) I demand interest as applicable on the amount at SI.No.(i) (payable, if any) and SI.No.(ii) above under Section 75 of Chapter V of the Finance Act, 1994;

(iv) I impose a penalty on the amount demanded at SI.No.(i) (payable, if any) and SI.No.(ii) above at the rate of Rs.200/- per day from the date of failure to pay the above tax or at the rate of 2% of the tax amount, per month, whichever is higher, till the same is paid under Section 76 of Finance Act, 1994, for their failure to pay service tax in accordance with the provisions of Section 68 of the Finance Act, 1994 or the Rules made there under on M/s. Mukesh & Associates, Salem.

2. Brief facts are that assessee is registered with the Service Tax Department under the category of Consulting Engineer and Architect Services, besides other services. Based on the intelligence that they were not discharging service tax liability in full, investigations were carried out and the documents were scrutinized. A show cause notice was issued proposing to demand differential service tax of Rs.1,38,95,688/- for the period from October 2001 to September 2006 along with interest and also proposing to impose penalty. After due process of law, the Order-in-Original dated 12.12.2007 was

Customs, Excise & Service Tax Appellate Tribunal passed confirming the entire demand of service tax along with interest and also imposed penalties. The assessee filed appeal before the Tribunal and vide Final Order No. 364/2008 dated 17.4.2008, remanded the matter for denovo consideration with the following direction:-

> *"If it is proved to the satisfaction of the Commissioner that any of the documents asked for by the party is in departmental custody and is necessary to disprove any part of the department's case, learned Commissioner shall certainly supply copies of such document to the party. It is further made clear that the party shall co-operate with the adjudicating authority by filling their reply to the show-cause notice and availing opportunity of hearing earnestly within a reasonable period without seeking any more adjournment for any purpose whatsoever. The appellants shall file reply, if any, to the show-cause notice within 30 days from today and shall appear before the Commissioner on such subsequent date as may be fixed by him."*

In denovo adjudication, the Commissioner has passed the impugned order of which the operative portion reads as above. Thus, it is seen from the impugned order that the Commissioner has remanded the matter for verification. It is not known how the adjudicating Commissioner has powers to remand the matter for verification. The adjudicating authority has applied the judgment in the case of Intercontinental Consultants and Technocrats Pvt. Ltd. Vs. Union of India – 2013 (29) ELT 9 (Del.) and giving the benefit to the assessee, thus reducing the confirmation of demand. However, instead of verifying and quantifying the demand, the Commissioner has ordered for verification of the documentary evidence. This order made by the adjudicating Commissioner does not seem to be proper or within the provisions of law. Thus, the order passed by the Commissioner is not in order. The same requires to be remanded to the Commissioner for reconsideration. We, therefore, leave all the issues open once again remanding the matter to the Commissioner / adjudicating authority for denovo consideration of the matter.

2. The impugned order is set aside and the appeal filed by the assessee is allowed by way of remand to the adjudicating authority.

3. Appeal No. ST/24/2008 filed by the department is against the earlier Order-in-Original No. 10/2007 (Commr) dated 12.12.2007, which has been set aside by the Tribunal vide Final Order No. 364/2008 dated 17.4.2008 and remanding the matter to the adjudicating authority. Hence the appeal filed by the department is dismissed as infructuous.

(Operative portion of the order was pronounced in open court)

Sulekha Beevi

(**Madhu Mohan Damodhar**)
Member (Technical)

(**Sulekha Beevi C.S.**)
Member (Judicial)

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