IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

Service Tax Appeal No.42285 of 2013

(Arising out of Order-in-Appeal No. 84/2013 dated 30.7.2013 passed by the Commissioner of Customs and Central Excise (Appeals), Trichy)

Shri M. Pandidurai **Appellant**
No. 28, Asoka Bhavan Lodge
Junction Road
Tiruchirappalli – 620 001.

Vs.

Commissioner of GST & Central Excise **Respondent**
No. 1, Williams Road
Cantonment, Trichy – 620 001.

<u>APPEARANCE:</u>

Shri M. Karthikeyan, Advocate for the Appellant
Smt. Anandalakshmi Ganeshram, Supdt. (AR) for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri M. Ajit Kumar, Member (Technical)

Final Order No. 40405/2023

Date of Hearing: 07.06.2023
Date of Decision: 08.06.2023

Per Ms. Sulekha Beevi C.S.

Brief facts are that on verification of accounts of M/s. Ordnance Factory, Tiruchirappalli, it was noticed that for the years 2007 – 08, 2008 – 09 and 2009 – 10, the appellant had provided services to M/s. Ordnance Factory, Tiruchirappalli and had not discharged the service tax under 'cleaning services'. The appellant was asked by the Superintendent of Central Excise, Superintendent vide his letters dated 31.5.2011, 28.7.2011 and 27.9.2011 to obtain service tax registration, to make the service tax payment and file ST-3 returns in respect of cleaning services provided to M/s. Ordnance Factory, Tiruchirappalli. The appellant did not respond to any of these letters and also failed to furnish details and discharge service tax liability. As per Order in Original dated 31.3.2017, the original authority adjudicated the Show Cause Notice issued to the appellant and confirmed the demand along with interest and imposed penalty. Against this, the appellant filed appeal before the Commissioner (Appeals) who upheld the same. Hence the appellant is now before the Tribunal.

2. The learned counsel Shri M. Karthikeyan appeared and argued on behalf of the appellant. It is submitted that the order has been passed in violation of principles of natural justice. The learned counsel adverted to the address in the Show Cause Notice in which it is stated as under:-

> *"Shri M. Pandithurai, No. 2, Kadambangudi, Mehalathur Post, Thanjavur District - 613 102 (hereinafter referred to as "the service provider") previously residing at No. 2/126-E, Dindigul Road, Ramjee Nagar, Trichy - 620 009 was engaged in providing certain services to M/s. Ordnance Factory, Tiruchirappalli"*

3. From the above, it can be seen that the appellant was earlier residing in Trichy. Even though the department had knowledge that the appellant is not residing in the address at Trichy, the Show Cause Notice was issued to the address at Trichy. The notice sent by post was returned with remarks 'not claimed'. A copy of the Show Cause Notice was then pasted at the Trichy address. This was also sent back by the owner of the house with the remarks 'the appellant has vacated the premises before two years'. The learned counsel argued that the Show Cause Notice has not been served upon the appellant and the appellant could not reply to the Show Cause Notice. Further, the intimations of personal hearing were also not received by the appellant and the adjudication order has been passed without granting personal hearing to the appellant. It is submitted by learned counsel that the Order in

Original was pasted in the Trichy address and the tenant of the said address after much difficulty traced out the appellant and handed over the order to the appellant. Thereafter, the appellant has made efforts to file appeal before Commissioner (Appeals). Though all these grounds were raised before the Commissioner (Appeals), the contention that the order is passed against principles of natural justice was not at all considered by the Commissioner (Appeals). It is prayed that as the Show Cause Notice itself was not served upon the appellant, the demand cannot sustain and may be set aside.

4. The learned AR Smt. Anandalakshmi Ganeshram, Supdt. (AR) adverted to the discussions in para 5 of the impugned order and submitted that the Show Cause Notice as well as the Order in Original were pasted in the rented premises which was occupied by the appellant. The procedure as prescribed under sec. 37C(b) of the Central Excise Act, 1944 has been complied with and there is no violation of principles of natural justice.

5. Heard both sides.

6. The main contention put forward by the learned counsel for the appellant is that the adjudication order has been passed exparte and that the Show Cause Notice has not been served upon the appellant. The registration certificate of the appellant has been adverted to by the appellant wherein the address is as under:-

> *"M. Pandidurai, 28, Ashok Bhavan Lodge, Junction Road, Tiruchirappalli"*

7. However, the department has issued the Show Cause Notice at the address i.e. No. 2/126-E, Dindigul Road, Ramjee Nagar, Trichy – 620 009. It is stated in the opening paragraph of the Show Cause

Notice that this was the address in which the appellant was previously residing. The department was fully aware that the appellant is not residing and not available in the address at No. 2/126-E, Dindigul Road, Ramjee Nagar, Trichy – 620 009. Even then the Show Cause Notice has been issued to the said address by the department. After the Show Cause Notice was returned as unclaimed, the department has not opted to issue the Show Cause Notice to the proper address and instead was followed the procedure under sec. 37C(b) of the Central Excise Act r/w sec. 83 of the Finance Act, 1994 to paste and affix the Show Cause Notice at the Trichy address. The appellant has not been served the intimations for personal hearing and the order is seen to have passed exparte.

8. From the facts, we are convinced that the Show Cause Notice was not issued to the appellant and also that the order has been passed exparte. Clear violation of principles of natural justice is established. For this reason, we hold that the demand cannot sustain and requires to be set aside, which we hereby do. The appeal is allowed with consequential relief, if any, as per law.

(Pronounced in open court on 08.06.2023)

(**M. AJIT KUMAR**)
Member (Technical)

(**SULEKHA BEEVI C.S.**)
Member (Judicial)

Rex