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

Service Tax Appeal No.41515 of 2014

(Arising out of Order in Original No. 08/2014 (ST) Commissioner dated 16.5.2014 passed by the Commissioner of Central Excise, Salem)

M/s. KGM and Co. **Appellant**
No. 80/1, R.S. Road
Perundurai, Erode – 638 502.

Vs.

Commissioner of GST & Central Excise **Respondent**
No.1, Foulks Compund
Anaimedu, Salem – 636 001.

APPEARANCE:

Smt. Aparna Nandakumar, Advocate for the Appellant
Shri Harendra Singh Pal, AC (AR) for the Respondent

CORAM

Hon'ble Shri P. Dinesha, Member (Judicial)
Hon'ble Shri M. Ajit Kumar, Member (Technical)

Final Order No.40749/2023

Date of Hearing : 01.09.2023
Date of Decision: 01.09.2023

Per P. Dinesha,

The assessee-appellant has filed this appeal against Order in Original No. 8/2014 dated 16.5.2014.

2. The learned counsel Smt. Aparna Nandakumar would contend, at the outset, that Show Cause Notice was issued proposing to levy tax on Management, Maintenance or Repair Service and Supply of Tangible Goods Service. But, however, with the introduction of section 97 vide Finance Act 23 of 2012, whereby the levy of service tax on Management, Maintenance or Repair of road had been withdrawn, the

adjudicating authority himself has dropped the demand on the said service and therefore the scope of the appeal is limited to the demand of service tax on supply of tangible goods. She submits that the appellant inadvertently did not place facts on record along with relevant document. But, however, only filed a summary reply to the Show Cause Notice and hence there is no finding on merits in the impugned order insofar as the demand of service tax which is impugned herein is concerned. She would take us through the impugned order at para 07.07 wherein the lower authority has specifically recorded that the service provider did not refute the allegation of non-payment of service tax under the disputed category. She would also submit that a finding was required since there was actually no transfer of possession or effective control of the machinery involved and in this context she has placed reliance on decisions of various higher judicial fora.

3. Per contra, learned AR Shri Harendra Singh Pal, Assistant Commissioner supported the findings of the lower authority.

4. We find that the contention of the learned counsel is correct inasmuch as there is no discussion in the first place on merits and hence there is also no finding on the same. The same appears to be for the reason that the appellant itself did not explain the facts vis-à-vis with the requirement to section 65(105)(zzzzj) ibid and hence there is no discussion in the impugned order. However, in the interest of justice, we deem it proper to remand the issue back to the file of the lower authority before whom the appellant can file suitable explanation, if so advised and thereafter, the lower authority shall pass

a denovo speaking order on merits. The other contentions are left open. The appeal is allowed by way of remand.

(Pronounced in open court on ____________)

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

(**P. DINESHA**)
Member (Judicial)

Rex