CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI.

PRINCIPAL BENCH, COURT NO. II

Service Tax Appeal No.52104 of 2018-SM

[Arising out of Order-in-Appeal No. IND-EXCUS-000-APP-427-17-18 dated 27.12.2017 passed by the Commissioner (Appeals), Customs, Excise and Service Tax, Indore]

M/s. GGN International **Appellant**
401, Princess Empire
12, Race Course Road
Indore.

VERSUS

Commissioner of Central Goods and Service Tax, Central Excise & Customs, **Respondent**
P. B. No. 10, Manik Bagh Road
Manik Bagh Palace, Indore (M.P.)

APPEARANCE:

Shri Abhishek Jaju, Advocate for the appellant
Shri K. Poddar, Authorised Representative for the respondent

CORAM:
HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO.51501/2019

DATE OF HEARING/DECISION:14.08.2019

ANIL CHOUDHARY:

Heard the parties.

2. The issue in this appeal being the fact that for the financial year 2012-2013, the appellant is working as Commission Agent and has assisted the foreign clients to sale their goods to Indian customers, who are ultimate end users, whether they are providing "Business Auxiliary Services" to Indian customers. In the course of internal audit,

it was noticed by the Revenue that the appellant has raised invoices for providing taxable services of Rs.92,84,522/-, being commission received from the Indian customers, but have paid the service tax on the amount of Rs.70,14,365/- only. Thus, it appears that the appellant has short paid service tax on the taxable turnover of Rs.22,70,157/- and thus, have short paid the service tax of Rs.2,80,591/-. In response to the letters issued by the Superintendent on the appellants dated December and January, 2014, the appellant filed a reply on 24.01.2014, whereunder they have stated that they have paid the correct tax as the balance amount of Rs.22,70,157/- was adjusted as per Rule 6 of Service Tax Rules, 1994. The said reply did not appear to be acceptable to the Revenue in absence of documentary evidence. Accordingly, invoking extended period of limitation, show cause notice dated 23.02.2015 was issued demanding the said tax amount of Rs.2,80,591/- with proposal to impose penalty. The show cause notice was adjudicated ex parte and the proposed demand confirmed with interest and further penalty was imposed under Section 76, 77 and 78 of the Act.

3. Being aggrieved, the appellant preferred appeal before the ld. Commissioner (Appeals). During the course of hearing, it was stated by the appellant that there is violation of principles of natural justice and proper opportunity was not provided. Further, the ground of rejecting the adjustment made by the appellant, as per Rule 6(3) of Service Tax Rules, 1994, was raised for the alleged non-submission of the required documents for claiming the credit under Rule 6(3) of Service Tax Rules, 1994 by the appellant. The appellant had produced

correspondence made with the Department pursuant to audit. Further, it was stated that the said amount of alleged stated turnover was duly adjusted as per Rule 6(3) of Service Tax Rules, as the services in respect of such payment were never actually provided. Therefore, the credit note was duly posted in ledgers of respective parties, thus meeting the requirement of Rule 6(3) of Service Tax Rules, 1994. The appellant also produced copy of contract of service during the period 2011-2012 and 2012-2013 with various parties – service receivers and also produced evidence of re-negotiation in terms of consideration for the services not provided during the respective years. He also produced evidence of issuance/posting credit entries/ notes against the difference of the amount, after negotiating the terms of consideration. Further, the appellant have also produced evidence of adjustment made in the books of accounts in accordance with law.

4. The Commissioner (Appeals) was pleased to dismiss the appeal observing that the appellant has filed some documents for the first time by way of additional evidence and such documents were not placed before the Adjudicating Authority, and further there were no cogent reasons for not producing the documentary evidence before the First Court. Further, it was held that there is no violation of principles of natural justice. Accordingly, he rejected the appeal. Being aggrieved, the appellant is before this Tribunal.

5. Having considered the rival contentions and going through the records, I find that in the list of relied upon documents - ST-3 Returns for the period Jan. to March, 2013 and reply dated 24.01.2014 by the

appellant have been made RUDs. However, there is no discussion by the Adjudicating Authority as to the nature of adjustment nor as to what is contained and/or declarations made in the returns, which were made RUDs. Further, the Commissioner (Appeals) have erred in not adjudicating the appeal on merits and have dismissed the same for technical reasons. The Hon'ble Supreme Court in the case of **Commissioner of Income Tax Vs. Kanpur Coal Syndicate Tax, matters,** the powers of the Commissioner (Appeals) are coextensive with the powers of the Adjudicating Authority. Thus, in the interest of justice, I set aside the impugned order and remand the matter to the Adjudicating Authority for ready consideration of the matter in accordance with law. The appellant is also directed to appear before the Adjudicating Authority within 60 days of receipt of the copy of this order along with their representation and supporting documents, and seek opportunity of hearing.

6. Thus, the appeal is allowed by way of remand.

[Dictated & pronounced in open court]

(Anil Choudhary)
Member (Judicial)

ckp