CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH

Service Tax Appeal No. 51109 of 2020 [SM]

[Arising out of Order-in-Appeal No.103 (SM) ST/JPR/2020 dated 04.03.2020 passed by the Commissioner (Appeals), CE & CGST, Jaipur]

M/s. Benu Prabhakar **...Appellant**
C-118, Mangal Marg, Bapu Nagar,
Jaipur – 302 005 (Raj.)

VERSUS

The Commissioner **...Respondent**
Central Excise & CGST Commissionerate,
Jaipur (Raj.)

APPEARANCE:

Mr. Ankit Totuka, Advocate for the Appellant
Mr. Mahesh Bhardwaj, Authorised Representative for the Respondent

Coram: HON'BLE MRS. RACHNA GUPTA, MEMBER (JUDICIAL)

DATE OF HEARING/DECISION:**01.11.2021**

FINAL ORDER No. 51929/2021

RACHNA GUPTA

Present appeal has been filed to assail the Order in Appeal No.103 dated 04.03.2020 vide which matter has been remanded by Commissioner (Appeals) to the adjudicating authority below with the direction to make necessary inquiry/verification regarding the correctness of the averment of the appellant for the period January, 2013 to March, 2013.

2. The facts in brief relevant for the present appeal are as follows:-

On the basis of third party information received Income Tax Department it was noticed that the appellant has not paid the service tax for the Financial Year 2012-13. Accordingly, Show Cause Notice No.1205 dated 25.04.2018 was issued proposing the recovery of an amount of Rs.1124738/- alongwith the interest and the proportionate penalties. The said proposal was initially confirmed vide Order in Original No. No.2240 dated 25.04.2019. The appeal thereof has been disposed of in the aforesaid terms. Still aggrieved, the appellant is before this Tribunal.

3. I have heard Shri Ankit Totuka, ld. Advocate for the appellant and Shri Mahesh Bhardwaj, ld. D.R. for the Department.

4. It is primarily submitted on behalf of the appellant that the present adjudication has to be rejected for preliminary reason that the show cause notice was never served upon the appellant within the maximum period as provided under the statute i.e. within the period of 5 years. It is mentioned that there is no apparent reason to invoke the maximum period over and above the normal period. Ld. Counsel has brought to the notice that the Show Cause Notice was otherwise issued against the wrong address. The certificate of registration is impressed upon where the residential address of appellant is mentioned as C 118, Mangal Marg Bapu Nagar, Jaipur -302015 and the address of official premises as F 663, Ground Floor, Road No.F2, VKI Area, VKI Post Office, Jaipur-302013. However, as is apparent from the impugned show cause notice, the notice was served upon the address i.e. M/s. Benu Prabhakar, C-66A Road No.1, VKI Area, Opp. Samerpan Health Center Jaipur Vishwakarma IA.-Jaipur,

Rajasthan 302013. It is further submitted that vide letter dated 17.09.2018 which was again issued at the aforesaid wrong address. However, a copy thereof was got served on the residential premises of the appellant. It is from said letter that the appellant acquired the knowledge of the impugned show cause notice to have been issued against the appellant. Immediately thereafter, vide letter dated 3.8.2018, the appellant denied receiving the said letter. It is submitted that the authorities below have not appreciated the said fact. In fact the Order in Original also has been passed at the back of the appellant by serving the notices of appearance at the same wrong address which were never received by the appellant. However, after acquiring the knowledge of the said order when appeal was filed before Commissioner (Appeals) the plea of show cause notice being never served upon the appellant was specifically taken, Appeal Memo ground No.2 has been impressed upon. It is mentioned that Commissioner (Appeals) has still being silent about the said plea. After acknowledging the discharge of liability under VCES 3 till 31st of December, 2012 that the matter with respect to the demand of remaining 3 months period has been remanded back to the original adjudicating authority, ld. Counsel has impressed upon that service of SCN was mandatory. The non-service is sufficient for ordering dropping of the demand. It is in addition submitted that appellant was providing the services of C& F agent. It got itself registered in the year 2014 only when the quantum of commission received by the appellant touched the threshold of taxable limit. The order under challenge is accordingly, prayed to be set aside and appeal is prayed to be dismissed.

5. Per contra ld. DR has laid emphasis upon the Order-in-Appeal itself. With respect to the silence about the non-service of SCN ld. DR has opted to not to make any submission. However the appeal is prayed to be dismissed.

6. After hearing the parties and perusing the record, I observe that the non-service of SCN during the period of 5 years, as pleaded by the appellant, is very much apparent from the documents. A letter sent by the appellant to Dy. Commissioner concerned as received by the Department on 15th October, 2018 appears to be the reply to the impugned SCN given by the appellant with the clear mention that the said SCN was never received by them. The perusal thereof reflects that appellant has specifically mentioned about the SCN dated 25.4.2018 to have been received only on 17.9.2018 due to the same being earlier served on the wrong addresses. It was the letter dated 17.9.2018 which was served upon address C-118, Mangal Marg, Bapu Nagar, Jaipur, which is mentioned as the residential address of the appellant in Form ST-2/ the Registration Certificate as is annexed on record. In the said letter, the appellant has specifically prayed for setting aside the impugned demand for non-service of the SCN in the statutory period. Similar is the prayer before Commissioner (Appeals) as is apparent from the grounds of appeals annexed on the record of the present appeal. Perusal of Commissioner (Appeals) order corroborates the submissions of the ld. Counsel for the appellant to the fact that Commissioner (Appeals) has miserably been silent upon the aspect of the non-service of the SCN within the maximum period provided to the Department for the purpose.

7. It is also apparent from the record that appellant was not registered prior the year 2014. The impugned SCN has raised the demand for the year 2012-13. Department has not produced any document on record to show as to how the demand was proposed for two more financial years 2013-14 and 2014-15 vide the letter dated 17.9.2018. Nor there is any evidence to show that prior to 2014 also the appellant was rendering the impugned service for such quantum so as to bring him under the tax net. On the contrary appellant has sufficiently proved that the impugned SCN nor the notices of appearance before the original Adjudicating Authority was ever got served upon the correct address of the appellant. The Certificate of Registration of appellants was very much available with the Department. The non-service of SCN and even processes / Summons upon the address not mentioned in the said certificate is highly unreasonable. There is otherwise no explanation given by the Department for the said error committed. However, facts remains are that the SCN was never served upon the appellant. Question of receiving the same does not at all arises. The said non-service is the sufficient violation of the statutory mandate. In the given circumstances, the order of remanding the matter to pass an order after verification that too for a period only of 3 months, as passed by Commissioner (Appeals) is opined to not to be sustainable in the eyes of law, for the reason of violation of basic principle of natural justice that the opportunity of being heard was never been provided to the appellant.

8. In view of entire above discussion, since there was no valid service of SCN same cannot sustain and accordingly is to be set aside. Consequently the proposal of demand therein cannot be confirmed. As a result, the order under challenge irrespective of remand, is not sustainable. I draw my support from the following case laws as relied upon by ld. Counsel for the appellant:-

1. Teksons Ltd. vs. Assistant Collector of Customs, Bombay [2004 (165) ELT 17 (Bom.)
2. Ram Nivas Singh Contractor vs. Commr. Of C.Ex. & S.T. Allahabad [2019 (24) GSTL 451 (Tri-All.)
3. Collector of Customs, Cochin vs. Trivandrum Rubber Works Ltd [1999 (106) ELT 9 (S.C.)]

9. In view of entire above discussion, the order under challenge is hereby set aside. The appeal stands allowed.

[Dictated and pronounced in the open Court]

(RACHNA GUPTA)
MEMBER (JUDICIAL)

Anita