

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.**

PRINCIPAL BENCH - COURT NO. 2

Service Tax Appeal No. 53940 of 2023-SM

(Arising out of order-in-appeal No. BHO-EXCUS-001-APP-185-21-22 dated 10.01.2022 passed by the Commissioner (Appeals), Central Goods, Service Tax & Central Excise, Bhopal, M.P.)

M/s Mascat Chemengers and Consultants

Appellant

Gurukripa Complex, Plot No. 10, F-2
Zone-1, M.P. Nagar, Bhopal (M.P.)-462011.

VERSUS

**Principal Commissioner, CGST and
Central Excise**, 48A, Administrative Area
Arera Hills, Bhopal.

Respondent

APPEARANCE:

Sh. Ankit Somani, Chartered Accountant for the appellant
Sh. Gopi Raman, Authorised Representative for the respondent

CORAM:

HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)

FINAL ORDER NO. 50786/2023

DATE OF HEARING/DECISION: 27.06.2023

BINU TAMTA

The present appeal has been filed challenging the order-in-appeal No. 104-ST/2021 dated 10.01.2022, whereby the appeal filed by the appellant was dismissed.

2. The appellant is engaged in erection, commissioning and installation services. On the basis of the TDS data provided by the Income Tax Department for the period 2014-15, an enquiry was initiated against the appellant and he was called upon to submit copies of audited balance sheet, Form 26-AS, ST-3 returns alongwith challans and bank statement for the period 2014-15 to 2017-18. The

appellant, however, submitted Form 26-AS, balance sheet/ trial balance for the financial year 2014-15 and ST-3 returns for the period April - September, 2014 only. Despite repeated reminders, remaining documents for the second half period of October to March 2015, 2015-2018 were not submitted by the appellant.

3. Show cause notice dated 11.10.2019 was issued to the appellant to show cause as to why service tax amounting to Rs.2,04,155/- should not be demanded and recovered and why the interest and penalty be not imposed under the provisions of Section 75, Section 77(1)(a), Section 77(1)(c) and Section 78 of the Finance Act, 1994 respectively. The appellant failed to file any reply to the show cause notice and subsequently despite several opportunities having been granted failed to appear for personal hearing on 19.08.2020, 03.09.2020 and 24.09.2020. The Adjudicating Authority, consequently proceeded ex-parte and decided the issue on merits, confirming the demand and recovery of service tax including the interest and penalty amount. It is pertinent to note the relevant para of the order-in-original dated 05.01.2021:-

“(iv) I observe that the party did not comply with any letters/ summons issued to them and failed to submit any requisite documents and also failed to intimate the department whether the service income earned by them during the above said period was exempted from payment of service tax wholly/ partially or whether the liability of service tax thereon has been fulfilled by them wholly or otherwise and therefore, the party have failed to furnish information/ documents called by the Officer in accordance with the provisions of Act/ Rules and rendered himself liable for penal action under the Section 77(1)(c) of the said Finance Act, 1994.”

4. The appellant challenged the Order-in-original in appeal before the Commissioner (Appeals), however, despite opportunities of personal hearing through virtual mode was granted, he failed to appear and the appeal was thereafter taken up for decision. The

appeal was rejected observing that the plea taken by the appellant is not supported by the documentary evidence. Hence, the present appeal has been filed by the appellant before this Tribunal.

5. I have heard Sh. Ankit Somani, Id. Chartered Accountant for the appellant and also Sh. Gopi Raman, Id. Authorised Representative for the Department.

6. I find from the records of the case, that the appellant has miserably failed to contest the proceedings diligently in as much as he neither submitted the reply to the show cause notice nor attended the personal hearing either before the Adjudicating Authority or the Appellate Authority and have neither submitted the documents in support of pleas taken by him in the appeal before the Commissioner (Appeals). Ld. C.A. has taken through his submissions before the Commissioner (Appeals), which reads as under:-

"4. In the case of maintenance work, the customer of the appellant had deducted Income Tax (TDS) u/s 194C of the Income Tax Act on the full value of contract which includes supply of goods and maintenance cost.

5. During the year under consideration, the total (Gross Value) on which TDS has been deducted has shown in 26AS of Rs.20,13,539/- out of which Rs.17,94,269/- is related to maintenance contract u/s 194C and balance amount of Rs.2,19,270/- was related to interest in other income u/s 194A."

7. This being the case where the appellant has failed to cooperate with the Department by placing reliance on record the requisite documents, particularly the submissions on which he is relying, I feel that an opportunity should be given to him to place such documents before the Adjudicating Authority to consider the case in light thereof particularly for the reason that the period involved was during the Covid time. Accordingly, both the parties have agreed that it would be just and appropriate to remand the matter back to the

Adjudicating Authority for denovo consideration. Needless to mention, the Id. C.A. has pointed out several decisions of the Tribunal (**2019-TIOL-1757-CESTAT-ALL M/s Kush Constructions vs. CGST NACIN, ZTI, Kanpur, 2018-TIOL-1061-CESTAT-CHD Commissioner of Central Excise and Service Tax, Delhi vs. Convergys India Service Tax, 2007 (4) TMI 23-CESTAT, New Delhi Calvin Wooding Consulting Ltd., vs. Commissioner of C. Ex., Indore, 2017 (1) TMI 657-CESTAT, New Delhi – Commissioner of C. Ex., Jaipur-I vs. Tahal Consulting Engineers Ltd., 2022 (7) TMI 656-CESTAT Ahmedabad Reynolds Petro Chem Ltd., vs. CCE&ST, Surat-I**) on the merits of the matter that the Revenue cannot compare the figures reflected in ST-3 returns with those reflected in Form 26-AS filed as per the Income Tax Act, 1961 and the Department ought to have examined the reasons for said difference. The principle taken note of was that the Income Tax and Service Tax are two different/ separate and independent special Acts and their provisions operate in two different fields and therefore relying on Form 26-AS / TDS statement, demand of service tax cannot be made. The Adjudicating Authority after examining the documents as may be submitted by the parties, needs to take into account the decisions of this Tribunal also while deciding the matter afresh.

8. Accordingly, the impugned order is set-aside and the appeal is allowed by way of remand.

(Operative portion of the order pronounced in open Court).

(Binu Tamta)
Member (Judicial)