CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.

PRINCIPAL BENCH, COURT NO. IV

E-HEARING
SERVICE TAX APPEAL NO. 52782 OF 2019

[Arising out of the Order-in-Appeal No. BHO-EXCUS-001-APP-281-18-19 dated 30/11/2018 passed by The Commissioner (Appeals), GST, Bhopal.]

M/s Basediya Construction, **......Appellant**
Main Road, Saikheda Tahsil – Gadarwara,
Dist. – Narsinghpur.

Versus

The Commissioner, CGST, **....Respondent**
GST Bhawan, C.R. Building,
Jabalpur (M.P.).

APPEARANCE:
Shri Himanshu Khemuka and Shri Kamal Khemuka, Advocates for the appellant.
Shri Rakesh Kumar, Authorized Representative for the Department

CORAM:
HON'BLE DR. MS. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE SHRI P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 50891/2026

DATE OF HEARING/DECISION : 23.04.2026.

RACHNA GUPTA

M/s Basediya Construction, the appellant herein is registered with the service tax department. On the basis of information received from the Income Tax Department, the appellant was observed to have received an amount of Rs. 3,62,24,790/- during the period 2012-2013 (as revealed from Form 26AS). TDS was also deducted under Section 174C of the Income Tax Act. Department formed an opinion that the appellant was rendering a taxable service, but has failed to pay the service tax. From the comparison of the said data (Form 26

AS) with the balance sheet of the appellant, there was observed the difference of Rs. 61,31,636/. With these observations, vide show cause notice No. 41/2017-18 dated 21.11.2017, service tax amounting to Rs. 7,57,836/- on the said taxable value of Rs. 61,31,636/- was proposed to be recovered from the appellant along with interest at the appropriate rate and the proportionate penalties. The proposal was initially confirmed vide the order-in-original bearing No. 11/2018-19 dated 23.07.2019. The appeal against the said order has been rejected vide order-in-appeal No. 281/2018-19 dated 30.09.2018. Being aggrieved, the appellant is before this Tribunal.

2. We have heard Shri Himanshu Khemuka, learned counsel for the appellant assisted by Shri Kamal Khemuka and Shri Rakesh Kumar, learned authorized representative for the department.

3. Learned counsel for the appellant has submitted that appellant could not appear before the original Adjudicating Authority nor before Commissioner (Appeals), hence, has requested for an opportunity for all the requisite documents available with the appellant, to be examined (even for sake of calculations) by the departmental Adjudicating Authorities. Department has not objected the said request.

4. We have perused the record. It is observed that order-in-original dated 23.07.2018 and the impugned/order-in-appeal dated 30.11.2018 both are the ex-parte orders recording that

despite effective opportunities given to the appellant, the appellant did not appear for being heard. This perusal and no apparent objection on the part of department is sufficient for us to accept the request of the appellant for remanding the matter. In addition, since the demand has been based on the calculation and comparison of two financial records, the income tax statement and the balance sheet of the appellant are required to examine by the departmental adjudicating authorities. Also the Principles of Natural Justice require that none shall be condemned unheard. Also that the fair opportunity of hearing to the appellant shall not be prejudicial to the department.

5. With these observations, we hereby remand the matter to the original adjudicating authority requiring the authority to give opportunity of representation to the appellant i.e. of hearing the appellant and for placing on record the requisite documents, if any, in its defence. Thus after giving reasonable opportunities rather to both the parties, the original Adjudicating Authority shall be adjudicating the impugned show cause notice dated 21.11.2017 afresh. With these observations and directions, the order under challenge is hereby set aside.

6. Consequently the appeal stands allowed by way of remand.

(Order dictated and pronounced in open court.)

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

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