CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R.K.Puram, New Delhi

COURT-II

Date of hearing/decision: 06.06.2017

Appeal No. ST/52751/2016-ST[SM]
[Arising out of the Order in Appeal No.BHO-EXCUS-001-AAP-144-16-17 dated 13/07/2016, passed by the Commissioner (Appeal) Central Excise, Bhopal

M/s Pramod Kumar Khandelwal …… Appellant

Vs.

C.C.E Indore …… Respondent

Appearance:

Present none for the appellant
Present Shri K. Poddar, AR for the respondent

Coram: Hon'ble Mr.Ashok K. Arya, (Technical Member)

FINAL ORDER No. 53801/2017

Per Ashok K. Arya:

1. M/s Pramod kumar khandelwal is in appeal against Order in Appeal No. 144/16-17 dated 13/07/2016 passed by Commissioner (Appeals) whereunder the Order in Original sanctioning the appellant's refund claim of Rs. 1,48,320/- has been set aside.

2. The brief facts are that:

i. The appellant filed a refund claim application for Rs. 1,48,320/- on the ground that they wrongly issued an invoice for management consultancy service for Rs. 12 lakhs and service tax of Rs. 1,48,320/- was paid on the same. The appellant states that the service receiver did not pay said service charges as well as service tax amount and the appellant cancelled the above invoice.

ii. The assessee appellant paid service tax amounting to Rs.1,48,320/- on Technical and Marketing Consultancy Services provided to their client for the period April, 2012 to March, 2013.

iii. The payment of said service tax was shown in ST-3 returns.

iv. The service receiver at later date i.e. on 24/05/2014 denied to have availed said services and returned the invoice so raised by the assessee terming it as not payable by them.

v. The appellant did not furnish any documentary evidence alongwith refund claim contract.

vi. The appellant furnished a letter from M/s Sarthak Industries Ltd. to Deputy Commissioner, Central Excise mentioning that the appellant's bill for consultancy fee for the period April, 2012-March 2012 for the amount of Rs 12 lakhs was returned as not payable by *M/s Sarthak Industries*. It was also mentioned that *M/s Sarthak Industries Ltd*. did not avail appellant services.

vii. Deputy Commissioner sanctioned refund claim of Rs. 1,48,320/- vide Order in Original No. 101/2014-15 dated 22/08.2014 giving the reason that claim was supported by return advice dated 24/05/2004 of *M/s Sarthak Industries Ltd* evidencing that they did not avail the services of the appellant.

viii. The department went in appeal against the above sanction order dated 22/08/2014 before Commissioner (Appeals). The Commissioner (Appeals) vide impugned order in appeal set aside the Order in Original of Deputy Commissioner by which refund claim was sanctioned in favour of the appellant mainly on the ground that in original falls short of appreciating the fact and circumstances of the issue by sanctioning the subject refund claim.

ix. Therefore, the appellant is in appeal before the Tribunal.

3. There is none present for the appellant. However, the Revenue has been represented by Ld. DR Shri K. Poddar.

4. After having gone through the facts of the case and submissions of the appellant present in the appeal memorandum and that of submitted by Ld. DR, it appears that necessary evidences are required to be submitted before the Original Adjudicating Authority, who is to arrive at firm conclusion regarding the fact, if the subject services were provided or not provided to the appellant's client namely *M/s Sarthak Industries Ltd*. In this regard, the Original

Adjudication Authority to whom the matter is being remanded shall give opportunity of submission of necessary evidences to both the sides and thereafter decide the matter afresh.

5. In the result, the impugned order is set aside and appeal is allowed by way of remand in above terms.

[Order dictated and Pronounced in the open court]

(Ashok K. Arya)

Member (Technical)

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