**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**
**West Block No. 2, R.K. Puram, New Delhi – 110 066.**
**Principal Bench, New Delhi**

**COURT NO. IV**

**DATE OF HEARING : 20/09/2017.**
**DATE OF DECISION : 20/09/2017.**

**Service Tax Appeals No. 1471 and 1816 of 2010**

[Arising out of the Order-in-Appeal No. 109/BPL/2010 dated 02/08/2010 passed by The Commissioner (Appeals), Customs, Central Excise & Service Tax, Bhopal.]

CCE, Bhopal Appellant

Versus

M/s KBS Security Organization Respondent

and

M/s KBS Security Organization Appellant

Versus

CCE, Bhopal Respondent

**Appearance**

Shri P.C. Kashiv, Consultant – for the appellant.

Shri Sanjay Jain, Authorized Representative (DR) – for the Respondent.

CORAM: **Hon'ble Shri S.K. Mohanty, Member (Judicial)**
**Hon'ble Shri B. Ravichandran, Member (Technical)**

Final Order No. 56717-56718/2017 Dated : 20/09/2017

**Per. B. Ravichandran :-**

Both Revenue and the assessee/appellant are in appeal against order dated 02/08/2010 of Commissioner (Appeals), Bhopal. The assessee/appellant is engaged in providing taxable service under the category of security and manpower supply service. The dispute arose regarding the service tax liability of the assessee/appellant with reference to quantification of such liability and its timely payment. Proceedings initiated against the assessee/appellant resulted in original order dated 20/02/2009. The Original Authority confirmed the service tax liability of Rs. 28,52,227/-. He also imposed equivalent amount of penalty under Section 78 and alongwith further penalty under Section 76 and 77 of the Finance Act, 1994. On appeal, the Commissioner (Appeals) re-determined the tax liability of the appellant to Rs. 27,08,614/-. He upheld the penalty under Section 78 of the Finance Act. He set aside the penalty under Section 76.

2. The assessee/appellant is aggrieved by the order mainly on the ground that the quantification of tax liability has not been properly made. The learned Consultant submitted that they maintained two registers by the name 'bill book' as well as 'receipt record'. It appears that the Revenue has taken both the accounts to compute the taxable value. As such, some duplication of entries happened while such computation of the tax value. The learned Consultant submitted that the findings recorded in the impugned order made summary assertion while reducing the tax amount from Rs. 29.45 lakhs to Rs. 27.98 lakhs. It did not provide the details how such reduction was made and what are the claims of the assessee/appellant which were accepted. Further, the learned Consultant submitted a work sheet

giving yearwise details for tax liability based on their accounts. It is claimed that the total service tax liability will come to only Rs. 13,64,925/- against which they have already paid Rs. 15,04,479/-. It is the submission of the appellant that neither the Original Authority nor the First Appellate Authority had examined the books of accounts in the correct manner and considered the submissions of the appellant before arriving at the correct taxable value.

3. The learned AR submitted that the impugned order did not elaborate the reason for re-computing the tax liability except for general observations. Further, the adjustment of Rs. 15.97 lakhs as paid tax against the confirmed tax liability is not justified. The tax which was discharged by the assessee/appellant was in normal course and that too for the period not covered by the dispute were also considered without any justification. The Commissioner (Appeals) should have given more attention to the data submitted by the assessee/appellant and the claims made for payments. He should have got the matter verified by the Jurisdictional Authorities. The Revenue is aggrieved by the manner of quantification of tax liability and also manner of arriving at the tax already paid. The Revenue also contested the dropping of the penalty under Section 76.

4. We have heard both the sides and perused the appeal records. We have closely examined the impugned order with reference to quantification of tax liability and also details of tax

already paid as admitted in the impugned order. We find that both the sides in the present appeals are correct in their claim that the order did not justify the final conclusion by supporting details. In other words, the quantification as arrived at by the impugned order is to be based on documents maintained by the assessee/appellant and as cross verified by the Jurisdictional officer. Further, various claims made by the assessee/appellant were not discussed for a conclusion. As such, we find that the grievance of both the sides are justified.

5. Regarding adjustment towards service tax already paid, we find that the impugned order did not elaborate the basis on which such adjustment is made. On the point raised by the Revenue regarding the adjustment amounts has included normally discharges service tax, we find that such possibility has not been examined in the impugned order for a clear finding. In any case for both quantification of tax liability as well as adjustment towards already paid tax basic verification with the connected documents by the Jurisdictional officer is a basic requirement. Since, the issue involved is basically about factual verification and quantification, we find it fit and proper to set aside the impugned order and to remand the matter to the Original Authority for a fresh decision. The assessee/appellant shall be given adequate opportunity to submit all supporting evidence before a decision is taken. We note that the claim of the Revenue regarding incorrect adjustment of tax already paid has to be specifically examined by the Original Authority.

6. In view of the above observation, the appeals are allowed by way of remand.

(Order dictated and pronounced in open court.)

**(S.K. Mohanty)**
**Member (Judicial)**

**(B. Ravichandran)**
**Member (Technical)**

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