IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-SM

COURT –IV

Service Tax Appeal No.ST/58886/2013 [SM]

[Arising out of Order-in-Appeal No.91(ST)/RPR-I/2013 dated 15.05.2013 passed by the Commissioner (Appeals-I), Customs & Central Excise, Raipur]

Shri Padam Charan Guman Singh ...Appellant

Vs.

C.C.E. & S.T., Raipur ... Respondent

Present for the Appellant : Mr.Krishna Mohan Menon, Advocate
Present for the Respondent: Mr.K. Poddar, D.R.

Coram: HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

Date of Hearing/Decision: 16/11/2017

FINAL ORDER NO. 58058 /2017

PER: S.K. MOHANTY

This appeal is directed against the impugned order dated 15.05.2013 passed by the Commissioner (Appeals), Customs and Central Excise, Raipur.

2. The submissions made by the appellant in respect of the issues on merits as well as limitation were not considered in the impugned order on the ground that the said plea were not raised before the adjudicating authority and accordingly, the Commissioner (Appeals) is not empowered to consider the fresh issues for the first time as per the provisions of Rule 5 of

Central Excise (Appeals) Rules, 2001, made applicable to the Finance Act, 1994.

3. The ld. Advocate appearing for the appellant submits that due to mistaken notion, the appellant did not pay the Service Tax under the taxable category of business auxiliary service and pleaded the limitation aspect before the ld. Commissioner (Appeals). However, the ld. Commissioner (Appeals) ignoring the submission of the appellant has rejected the appeal, holding that the points raised the first time cannot be considered in terms of Rule 5 ibid. He further submits that the question of law for the first time can be raised even before the Hon'ble Supreme Court, if not raised before the lower authority. To support such stand, he has relied on the judgement of Hon'ble Supreme Court in the case of CCE, Ahmadabad vs. Pioma Industries & Imperial Soda Factory - 1997 (91) ELT 527 (S.C.).

4. On the other hand, the ld. DR appearing for the Revenue reiterates the finding recorded in the impugned order.

5. Heard both sides.

6. I find that the ld. Commissioner (Appeals) has rejected the appeal of the appellant on the ground that the issue on merits and the point of limitation were not raised before the Adjudicating authority and he cannot consider such ground for the first time in terms of Rule 5 ibid. It is the fact that the issues involved in the appeal before the Commissioner (Appeal) relate to both question of facts as well as the point of

limitation, which is a question of law. Since both the aspects are involved in this appeal, the appellant can raise such points even for the first time before the ld. Commissioner (Appeals), if not raised before the Adjudicating authority. I find that the Hon'ble Supreme Court while deciding such issue in the case of Pioma Industries (supra) has held that the point of law can be raised before the Supreme Court, even if, not raised before the Tribunal. In view of the fact that the Commissioner (Appeals) without considering the merits of the case as well as limitation aspect has decided the appeal against the appellant, I am of the view that the matter should go back to him for fresh consideration of the factual aspect of taxability and the issue of limitation raised before him.

7. Accordingly, after setting aside the impugned order, I allow the appeal by way of remand to the ld. Commissioner (Appeals) for passing fresh order. Needless to say, opportunity of personal hearing shall be granted to the appellant before deciding the issue afresh. The appellant is at liberty to make any further submissions at the time of hearing of the appeal before the Commissioner (Appeals).

[Dictated and pronounced in the Open Court]

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Anita