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. I

DATE OF HEARING : 29/12/2017.
DATE OF DECISION : 16/01/2018.

Service Tax Appeal No. 622 of 2012

[Arising out of the Order-in-Appeal No. 29/BK/GGN/2012 dated 31/01/2012 passed by The Commissioner of Service Tax, Chennai.]

M/s Pierce & Leslie Travel (P) Ltd. Appellant

Versus

CCE, Delhi – IV, Faridabad Respondent

Appearance

None (written submission) - for the appellant.

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

CORAM : **Hon'ble Shri Justice Dr. Satish Chandra, President**
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No. 50157/2018 Dated : 16/01/2018

Per. B. Ravichandran :-

This appeal is against order dated 31/01/2012 of Commissioner of Central Excise (Appeals), Delhi – III. The appellant is engaged in the business of tour operation and were registered with the Department to pay service tax as a tour operator. The dispute in the present appeal relates to the service tax liability of the appellant on three categories :-

(a) non-inclusion of air fare charges in determining the gross taxable value under tour operator service resulting in wrong availment of benefit under Notification 1/2006-ST;

(b) non-payment of service tax on the subscription paid as a member of a foreign Association on reverse charge basis under the category of Club or Association Service ; and

(c) non-payment of service tax on the consideration received for out bound tours.

2. The Original Authority adjudicated the case and confirmed the service tax liability on these disputes. The total liability of Rs. 26,13,440/- was confirmed alongwith penalties under Section 77 and 78 of Finance Act, 1994. The appellants paid an amount of Rs. 23,59,434/- under protest on 06/03/2009. On appeal, vide the impugned order the original order was confirmed.

3. The learned Counsel for the appellant vide his letter dated 25/12/2017 submitted that the case can be decided based on the arguments made in the appeal without need for a personal hearing to the appellant. He also submitted written note alongwith copies of case laws to support the appeal.

4. We have heard the learned AR who supported the findings of the lower authorities.

5. We note that the impugned order was passed ex-parte. Only one personal hearing was given on 26/12/2011. Since, nobody appeared on that day, nor any request for postponement was received, the Commissioner (Appeals) proceeded to decide the case. He recorded, rather, a very brief finding and upheld the original order. In the grounds of appeal, the appellant has taken a preliminary objection regarding violation of principles of natural justice by the First Appellate Authority while deciding the appeal filed by the appellant. It is submitted that a letter dated 20/11/2011 addressed to the appellant informing the date of personal hearing as 26/12/2011 was received by the appellant only on 15/12/2011. The Counsel for the appellant never received any such communication. The appellant brought the fact to the notice of the Counsel who vide letter dated 16/12/2011 made a request to the Commissioner (Appeals) for an adjournment of the hearing. It was clearly mentioned that due to pre-occupation with a case in Madras High Court, the Counsel could not appear for the hearing at New Delhi. The appellant is in possession of acknowledgement dated 21/12/2011 issued by the office of the First Appellate Authority. However, without considering these facts, the Commissioner (Appeals) proceeded to pass an ex-parte order on 31/01/2012. There was no discussion of any of the points raised by the appellant except re-production of all the points raised with a summary conclusion confirming the original order.

6. We have carefully considered the preliminary objection of the appellant regarding violation of principles of natural justice. We are in agreement with the same. The impugned order though reproduced the grounds of appeal elaborately for 4 pages did not discuss any of these grounds for a finding. In a brief conclusion the Commissioner (Appeals) found against the appellant and rejected their appeal.

7. We note that the impugned order as it stands cannot be sustained. The appellants made elaborate submissions on each one of the points now in dispute and we note there are clear judicial pronouncements covering at least two of these disputes. These were not considered by the lower authorities. Some judicial pronouncements are subsequent to these orders. While setting aside the impugned order and remitting the matter to the Commissioner (Appeals) we direct him to examine all the points including various case laws relied on by the appellant before taking a fresh decision. The appellant shall be provided adequate opportunity to submit their side of the case. The appeal is allowed by way of remand.

(Order pronounced in the open court on 16/01/2018.)

(Justice Dr. Satish Chandra) **(B. Ravichandran)**
President **Member (Technical)**
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