IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

BENCH-SM

COURT –III

Service Tax Appeal No.ST/60147/2013- [SM]

[Arising out of Order-in-Appeal No.164/S.Tax/D-II/13 dated 29.07.2013 passed by the Commissioner (Appeals), Central Excise Delhi-I]

M/s.Anand Corporation Services Ltd. ...Appellant

Vs.

C.C.E. & S.T. ... Respondent

Present for the Appellant : Mr.Shreyashat, Advocate
Present for the Respondent: Ms.Neha Garg, D.R.

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

Date of Hearing/Decision: 17/10/2017

FINAL ORDER NO. 57668/2017

PER: S.K. MOHANTY

This appeal is directed against the impugned order dated 29.07.2013 passed by the Commissioner (Appeals), Central Excise, Delhi-I.

2. Brief facts of the case are that the appellant is engaged in providing management consultant service. The rate of Service Tax prescribed for such Service was 8% *Ad valorem* prior to 10.09.2004. However, the rate of tax was enhanced w.e.f. such date to 10%. The Services provided after 10.09.2004 were liable to be taxed at the rate of 10%, whereas the appellant had discharged the Service Tax at the

rate of 8%. Accordingly, the balance amount of Service Tax was confirmed against the appellant.

3. The ld. Advocate appearing for the appellant submits that the services provided prior to 10.09.2004 were suffered tax at the rate of 8% and thereafter, at the rate of 10%. He further submits that though the documents showing receipt of payment etc. were produced before the original authority, but, the same were not considered in proper prospective, resulting in confirmation of the adjudged demand.

4. On the other hand, the ld. DR appearing for the respondent submits that the onus entirely lies with the appellant to prove that it had discharged the Service Tax liability properly as per the statutory requirement. Since the appellant did not produce adequate documents before the authorities below, confirmation of Service Tax demand is proper and justified.

5. Heard both sides.

6. I find from the appeal records that the appellant had enclosed the computation sheet in the tabular form, showing payment of appropriate Service Tax into the Central Government account. Since the ld. Advocate submits that the appellant had sufficient records to demonstrate that the Service Tax at the appropriate rate was paid in respect of taxable services provided by it, I am of the view that the matter should go back to the Original Authority for proper verification of the documents to be produced by the appellants.

Therefore, after setting aside the impugned order, I remand the matter to the original authority for verification of the documents to the effect that in respect of payment of Service Tax at the rate of 8%, the services were in-fact provided prior to 10.09.2004. It is made clear that receipt of payment in respect of taxable service is irrelevant for the purpose of consideration of the applicability of rate of tax. Therefore, while re-considering the matter, the original authority should only confine his findings to the period, when the taxable service was provided by the appellant i.e. whether prior to 10.09.2004 or after such date.

7. In view of above, the appeal is allowed by way of remand to the original authority.

[Dictated and pronounced in the Open Court]

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Anita