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

COURT-IV

Date of hearing/decision: 06.03.2018

Appeal No. ST/4043/2012- [DB]

[Arising out of the Order-in-Appeal No. 171-BPL-2012 dated 06/09/2012 passed by the Commissioner of Central Excise-BHOPAL(Appeal)]

N T Construction Prop Nirnjan Prasand Singh …Appellant

Vs.

CGST C.E & C.C-Bhopal … Respondent

Appearance:
Present Shri Pulkit, Advocate for the appellant
Present Shri Sanjay Jain, DR for the respondent

Coram: Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon'ble Mr. V. Padmanabhan, Member (Technical)

FINAL ORDER No. 51633/2018

Per S.K. Mohanty

The appellant is engaged in the activities of providing the taxable service, under the category of Maintenance and Repair. On scrutiny of the records maintained by appellant, it was observed by the Service Tax Department that during the period February, 2004 to December, 2008, the appellant had received the monetary consideration of Rs. 85,93,096/- from the recipient of service, but did not deposit the Service Tax amount into the Government account. Accordingly, the proceedings were initiated against the appellant for confirmation of the Service Tax demand. Vide the Order-in-Original dated 28/03/2012, the Joint Commissioner of the Service Tax had confirmed Service Tax demand of Rs. 5,40,177/- along with interest. On appeal, the Ld. Commissioner (Appeals) vide the impugned order dated 06/09/2012 has extended the SSI benefit to the appellant and reduced the adjudged demand to Rs. 2,15,245/-.

2. The appellant's grievance in this appeal is that though the bill was raised for an amount of Rs. 85,93,096/-, but the Service receiver had settled the claim only for Rs. 50,20,540/-. Thus, the contentions of the appellant is that on the receipted amount towards the taxable service, the appellant should only be liable to pay Service Tax.

3. Heard both sides.

4. We find that in the reply to show cause notice, the appellant had specifically stated that during the disputed period, it had received Rs. 50,20,540/- and discharged the Service Tax liability thereon. However, on perusal of the impugned order and also the adjudication order, we find that the authorities below have not discussed the submissions made by the appellant in the reply to the show cause notice. For ascertaining the correct tax liability, since the submissions of the appellant were required to be considered, we are of the view the matter should go back to the Original Authority for consideration of the submissions that instead of the billed amount of Rs. 85,93,096/-, it had actually received the amount of Rs. 50,20,540/-, on which appropriate Service Tax liability had been taxed.

5. Therefore, after setting aside the impugned order, we remand the matter to the Adjudicating Authority for proper quantification of the Service Tax demand which the appellant is liable to pay. Needless

to say that opportunity of personal hearing should be granted before decided the issue afresh.

6. In the result, appeal is allowed by way of remand to the Original Authority.

[Order dictated and pronounced in the open court]

(V. Padmanabhan)
Member (Technical)

(S.K.Mohanty)
Member (Judicial)

Rekha