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/51009/2018-CU [SM]

[Arising out of Order-in-Appeal No. BHO-EXCUS-001-APP-650-17-18 dated 29.01.2018 passed by the Commissioner Central Appeals Central GST, Bhopal.]

M/s. B.S. Reddy **...Appellant**

Vs.

C.C.E., Bhopal **... Respondents**

Present for the Appellant : Mr. Himanshu Khemuka, (Adv.)
Present for the Respondent : Mr. Harish Saini, A.R.

Coram: HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)

Date of Hearing.21.05.2018
Date of Decision._24.05.2018_

FINAL ORDER NO. __52005/2018______

PER: AJAY SHARMA

This appeal has been filed from the Order-in-Appeal dated 29.01.2018 by which the ld. Commissioner (Appeals), remanded the matter back to the adjudicating authority for fresh adjudication.

2. In this matter the Show Cause Notice dated 29.09.2010 was issued to the appellant as to why .

i. Service Tax of Rs. 36,49,552/- (Service tax Rs. 35,56,702/- + Ed Cess Rs. 71,134/- + S & H Ed. Cess Rs. 21,716/-) not paid by them on the taxable value of Rs. 33,2,06,222/-, should not be recovered from them under the provisions of Section 73 of ACT,

ii. A penalty under Section 76 of Act for contravention of Section 68 of Chapter V of the Act should not be imposed upon them.

iii. A penalty in addition to service tax and interest for suppressing value of taxable services should not be imposed upon them under Section 78 of the Act.

iv. Penalty under Section 77 of the Act for contravention of Section 70 of Chapter V of the Act Should not be imposed upon them.

v. Interest at appropriate rate should not be recovered under Section 75 of the Chapter V of the Act.

3. The adjudication authority i.e. joint Commissioner Vide Order-in-Original dated 29.03.2012 dropped the demand of Service Tax amounting to Rs. 30,20,814/- and confirmed the demand of Service Tax of Rs. 6,28,738/- including cess.

4. I have heard the ld. Advocate for the appellant and the ld. AR for the respondent and perused the records. At the time of hearing the ld. Advocate for the appellant raised a preliminary objection that the Appeal filed by the department before the Commissioner (Appeals) against the Order-in- Original dated 29.03.2012 is not maintainable, since against the said Order-in-Original the appellant had already filed appeal before the Commissioner (Appeals), which was partly allowed

in favour of the appellant by the Commissioner (Appeals), vide Order-in-Appeal dated 13.09.2012 by which the ld. Commissioner reduced the demand of Service Tax from Rs. 6.28 lacs to Rs. 1.51 lacs and against the said Order-in-Appeal the Department had filed appeal in this Tribunal being Appeal No. ST/3791/2012, but the same was dismissed as withdrawn vide order dated 05.07.2016 of this Tribunal due to litigation policy of the Government of India dated 17.12.2015. He also submitted that the impugned order has been passed in violation of the Principle of natural justice and no notice of hearing before the Commissioner (Appeals) was given to the appellant.

5. The ld. AR for the respondent submitted that the appellant had earlier filed the appeal before the ld. Commissioner (Appeals), only against that portion of the Order-in-Original dated 29.03.2012 by which the adjudicating authority confirmed the demand of Service Tax of Rs. 6,28,738/. Whereas the Appeal filed by the department in the year 2017, before the Commissioner (Appeals) is against that portion of the Order-in-Original dated 29.03.2012 by which the demand of Service Tax amounting to Rs. 30,20,814/- was dropped. The ld. AR further submitted that despite service of several notices, the appellant did not appear before the Commissioner (Appeals) and therefore, the matter was decided in their absence.

6. Since the appellant is raising the preliminary objection about the maintainability of appeal before the Commissioner (Appeals) therefore it is appropriate and also in the interest of justice, to remand the matter back to the Commissioner (Appeals) to decide the matter afresh, after hearing the appellant on the question of maintainability of Appeal.

7. In view of the above the impugned order is set aside and Appeal is allowed.

(Pronounced in the open court on ____24.05.2018___)

(**Ajay Sharma**)
MEMBER (JUDICIAL)

Sakshi