IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing/Order : 15.1.2019

Appeal No. ST/55918/2013-DB

(Arising out of Order-in-Original No. 47/2012/ST/JPR-II-COMM dated 23.11.2012 passed by the Commissioner, Central Excise, Jaipur)

M/s Khushi Enterprises		Appellant
	Vs.	
CCE & ST, Jaipur		Respondent

Appearance :

Ms. Rinki Arora, Advocate	-	for the appellant
Shri R.K. Majhi, D.R.	-	for the respondent

CORAM: **Hon'ble Mr. Anil Choudhary, Member (Judicial)**
Hon'ble Mr. Bijay Kumar, Member (Technical)

Final Order No. 50087/2019

Per Anil Choudhary:

Heard the parties on the appeal.

2. The ld. Counsel states that they are registered assessee and they paid the taxes from time to time. The show cause notice dated 20^{th} August 2011 was issued invoking the extended period of limitation for the period 2006-2007 to 2010-2011, demanding differential duty or duty short paid Rs. 1,72,17,199/-. However, in the said Show Cause Notice, certain services classifiable under

Supply of Tangible Goods (SOTG) which have been completed prior to 16.5.2008, when the classification of SOTG was introduced, in the Finance Act. Further, some non-taxable receipts in the nature of unsecured loans, advance against the proposed service and other non-taxable items are included. After receipt of the Show Cause Notice, the appellant filed interim reply on 22.11.2011. From the record of personal hearing, it appears that first date was fixed on 16th August 2012, when adjournment was sought and the next date was fixed on 24th Sept. 2012, and on further adjournment sought the next date was fixed on 25th Oct. 2012. The ld. Counsel states that in effect only three days were fixed for hearing, whereas they should have been granted at least three adjournments which in fact means, four dates for hearing. Further, the ld. Counsel states that there is no latches on their part and the volume of documents was huge, and they were in the process of filing the data for the purpose of hearing and had appeared on each of the date and had sought adjournment and only failed to appear on 25th October, 2012. Accordingly, they were prevented of sufficient opportunity to lead evidence before the adjudicating authority, leading to passing of the impugned ex. parte order with huge liability.

3. Heard ld. AR for Revenue who points out that the appellant have been not cooperating from the enquiry stage itself.

4. Having considered the rival contentions, we deem it fit and proper to allow this appeal by way of remand to the original adjudicating authority, to hear the appellant and shall pass a reasoned order in accordance with law. The appellant is also directed to appear before the adjudicating authority within a period of 30 days from the date of receipt of copy of this order along with their reply to show cause notice and seek opportunity of hearing and lead all evidences they wish to rely upon. In case the appellant fails to appear and cooperate with the adjudication process, the adjudicating authority is free to pass order in accordance with law. Thus, the appeal is allowed by way of remand.

(Dictated & pronounced in open Court)

(Bijay Kumar)
Member (Technical)

(Anil Choudhary)
Member (Judicial)

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