CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD

Division Bench

Court – I

APPEAL NO: ST/538/2009

(Arising out of Order-in-Appeal No: 09/2009 (V-II)ST, dated 27.02.2009 passed by CCE,C&ST (Appeals) Visakhapatnam]

CCE&CC, Visakhapatnam-II ….. Appellant(s)

Vs.

Balaji Enterprises ….. Respondent(s)

Appearance

Shri Dass Thavanam, Superintendent/AR for the Appellant.

None for the Respondent.

Coram:

Hon'ble Mr. M.V. RAVINDRAN, MEMBER (JUDICIAL)

Hon'ble Mr. P.V. SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: 06.06.2018

Date of Decision: 06.06.2018

FINAL ORDER No: A/30689/2018

[Order per: M.V. RAVINDRAN]

1. This appeal is directed against Order-in-Appeal No. 09/2009 (V-II)ST, dated 27.02.2009.

2. Heard both sides and perused the records.

3. On perusal of records, it transpires that show cause notice was issued to the respondent that they were not paying service tax on the actual value of the services provided by them and were paying this tax only on the amounts shown under the head 'Agency Commission' and also that they are not discharging the tax liability on the value of services of certain amounts received under various heads like sundries and miscellaneous expenses, supervision wages, conveyance expenses etc. Respondent furnished details as required by the authorities based upon which show cause notice was issued for demand of differential service tax on the Steamer Agency services and Custom House Agency Services. The said show cause notice was contested on merits by the respondent before the adjudicating authority and it was noticed that the adjudicating authority has recorded that respondent had not produced any evidence in support of their arguments that they were acting as sub contractor undertaking the activities on behalf of the main contractor and no evidence has been produced for exclusion of expenses on the ground that they are all reimbursable nature. After following due process of law, he confirmed the demands raised and imposed penalties and also demanded interest. We find that the first appellate authority has recorded in the impugned order that he has considered the case papers and had come to the conclusion that the respondent is acting as a sub contractor, without relying upon any evidence if any, were produced before him. As regards confirmation of demands on

the Custom House Agency Services also, he quotes that the respondent is eligible for such deduction as reimbursable expenses but has not recorded as to any evidence was produced before him. In the absence of any evidence on records, we find that the issue needs reconsideration by the first appellate authority. The first appellate authority should record reasoning to come to the conclusion on the appeals filed by the assessee, after following principles of natural justice.

4. Impugned order is set aside and the matter is remanded back to the first appellate authority to reconsider the issue afresh, keeping in mind the principles of natural justice.

5. Appeal is disposed of by way of remand to the Commissioner (Appeals).

(Operative portion of the order pronounced in open court on conclusion of hearing)

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

(M.V. RAVINDRAN)
MEMBER (JUDICIAL)

VRG