IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
EAST REGIONAL BENCH : KOLKATA

S.TAppeal No.414/11

(Arising out of Order-in-Original No.47/ST/Commr./BOL/2011 dated 30.06.11 passed by the Commissioner of Central Excise, Bolpur)

M/s AMA (JV)

Applicant (s)/Appellant (s)

Vs.

Commr. of Central Excise, Bolpur

Respondent (s)

Appearance:

Shri Kartik Kurmy, Adv. for the Appellant (s)
Shri K. Choudhury, Supdt. (A.R.) for the Revenue(s)

CORAM:
HON'BLE SHRI JUSTICE (DR.) SATISH CHANDRA, PRESIDENT
HON'BLE SHRI C. J. MATHEW, TECHNICAL MEMBER

Date of Hearing : 22.03.2018
Date of Decision : 22.03.2018

ORDER NO.F/O/75628/2018

Per Dr. Satish Chandra.

The present appeal has been filed by the appellant against the impugned Order-in-Original No.47/ST/Commr./BOL/2011 dated 30.06.11 passed by the Commissioner of Central Excise, Bolpur.

2. Briefly stated the facts of the case are that the period of dispute is 16.06.2005 to 31.05.2007. By the impugned order, the ld. Commissioner has confirmed the service tax demand under the category of "Site Formation Etc.Services" as defined under Section 65 (97a) read with Section 65 (105)(zzza) of the Finance Act, 1994 along with interest under Section 75 of the Act and also imposed

penalties by considering the activity of shaft vertical (considering designing, sinking, lining and equipping etc. is an activity preparatory service for mining in relation to mining taxability). Being aggrieved, the appellant has filed the present appeal.

3. With this background, we have heard Shri Kartick Kurmy, ld.Counsel for the appellant and Shri K. Choudhury, ld. D.R. for the Revenue.

4. After hearing both sides and on perusal of record, it appears that an identical issue has come up before the Tribunal in the case of M/s Maheshwari Enterprises Vs. Commr. of Central Excise, Bolpur (Final Order No.FO/77118/2017 dated 29.08.2017), where the matter was remanded back to the original authority.

5. By following the earlier decision of the Tribunal (supra), we set aside the impugned order and remand the matter to the adjudicating authority with similar direction and to decide the issue denovo but by providing the reasonable opportunity to the assessee. Fresh evidences, if need be, may be admitted as per law.

6. In the result, the appeal filed by the appellant is allowed by way of remand.

(Dictated and pronounced in the open court.)

Sd/
(C.J.Mathew)
Member (Technical)

Sd/
(Justice Dr. Satish Chandra)
President

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