IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.2

Service Tax Appeal No. 77041 of 2018

(Arising out of Order-in-Appeal No. 82-84/RAN/2018 dated 21.02.2018 passed by Commissioner of CGST & Central Excise, Ranchi.)

M/s Centaurus Estates Pvt. Ltd,
Jyshree House, Gandhi Chowk, Upper Bazar, Ranchi-834001.

...Appellant

VERSUS

Commissioner of CGST & Central Excise, Ranchi.
Grand Emerald (2nd & 3rd Floor), Ashok nagar, Kadru- Argora Main Road, Ranchi-834001.

.. ...**Respondent**

APPERANCE :

None, for the Appellant
Shri S. Mukhopadhyay, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. K. ANPAZHAKAN MEMBER (TECHNICAL)

FINAL ORDER No……76216/2023

DATE OF HEARING : 20.07.2023
DATE OF DECISION : 20.07.2023

PER K. Anpazhakan :

When the matter was called none appeared for the Appellant. As the issue involved is on a narrow campus, I take up the appeal for decision based on their written submissions and the submissions made by the Ld. A.R.

2. The Ld. A. R. submitted that the Commissioner (Appeals) has remanded the matter to the original adjudicating authority for quantification of the demand. I find that the Appellant has filed the present appeal against the impugned order passed by the Commissioner (Appeals), on the following grounds :-

The Learned Commissioner (Appeals), has been passed the order mechanically without appreciating the facts put before him by the appellant and hence it suffers from infirmities.

2. For the period 2010-11 to 2013-14, the Ld. Commissioner (Appeals) has remanded the matte to the adjudicating authority for re-quantification of the

service tax short paid by the Appellant. This directive of the Ld. Commissioner is against the powers of the Commissioner (Appeals) under Section 85(4) of the Finance Act, 1994. The directive of the Ld. Commissioner (Appeals) for re-quantification of penalty under Section 78(1) of the Finance Act, 1994 is without any proper guidelines and also against his power.

3. They have already submitted a detailed chart of Receipts in various financial years along with the reasons for non-taxability/taxability of the receipts. However, the Ld. Commissioner (Appeals) has ignored their submissions.

4. They have already submitted the ledger and bank statements of all buyers during the impugned period at the time of investigation of the matter and therefore pray that the same be considered for purposes of deciding the taxability or otherwise.

5. They have already paid Rs.64017/- and Rs.30900/- vide challan no. 00460 and 00206 dated 24/09/2012 and 26/09/2013 respectively i.e. well before the issue of the Demand-Cum-Show Cause Notice dated 19/10/2015. Payments made vide these two challans have not been taken into account while ascertaining the demand of Service Tax short paid.

6. I observe that the Appellant has submitted a detailed chart of Receipts in various financial years along with the reason for non-taxability/taxability of the receipts. They have already submitted the ledger and bank statements of all buyers during the impugned period at the time of investigation of the matter and prayed that the same be considered for purposes of deciding the taxability or otherwise. However, the original adjudicating authority or Appellate authority has not given any findings on their submissions.

7. I observe that without verification of the documents submitted by the Appellant, their service tax liability cannot be ascertained. I find that the commissioner (Appeals) has rightly remanded the case the original adjudicating authority for determination of the appropriate taxes payable after

taking into account all the submission made by the appellant as mentioned above. There is no merit in the contention of the Appellant that Commissioner (Appeals) has no power to remand the matter. Section 85(4) of the finance Act, 1994 states that the Commissioner of Central Excise (Appeals) shall hear and determine the appeal and, subject to the provisions of this Chapter, pass such orders as he thinks fit and such orders may include an order enhancing the service tax, interest or penalty. The power to remand the case is part of the power of Commissioner (Appeals) as provided in Section 85(4). Hence, I hold that there is no infirmity in the impugned order passed by the Commissioner (Appeals). Accordingly, the appeal filed by the appellant is dismissed and the appellant is directed to participate in the remand proceedings before the original adjudicating authority as directed by Commissioner (Appeals), in the impugned order dated 21.02.2018.

(Dictated and pronounced in the open court)

Sd/-

(K. Anpazhakan)
Member (Technical)

T.K.