IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA

REGIONAL BENCH - COURT NO.1

Service Tax Appeal No.366 of 2010

(Arising out of Order-in-Original No.09/S.Tax/Commr/2010 dated 06.08.2010 passed by Commissioner, Central Excise & Service Tax, Jamshedpur.)

M/s. Union Enterprises
(A-16-17, 2nd Phase, Industrial Area, Adityapur, Jamshedpur.)

...Appellant

VERSUS

Commissioner of Central Excise & Service Tax, Jamshedpur

.....Respondent

(Outer Circle Road, Bistupur, Jamshedpur, Jharkhand.)

APPEARANCE

Shri Deepro Sen & Ms. Udita Saraf, both Advocates for the Appellant (s)

Shri J.Chattopadhyay, Authorized Representative for the Revenue

CORAM: HON'BLE SHRI ASHOK JINDAL, MEMBER(JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER(TECHNICAL)

FINAL ORDER NO. 76385/2023

DATE OF HEARING : 4 August 2023
DATE OF DECISION : 4 August 2023

Per : ASHOK JINDAL :

The appellant is in appeal against the impugned order wherein demand has been confirmed under the category of 'business auxiliary service' along with interest and penalties were also imposed.

2. The facts of the case are that during the course of audit of the appellant's record, it was revealed that during the period 2003-04 to 2005-06, the appellant has shown as income under the head 'Commission and Discount' in their balance sheet. Revenue is of the

view that the appellant is liable to pay service tax on the said commission received by them, therefore, a show cause notice was issued to the appellant on 08.04.2009 to demand service tax from the appellant during the period 2003-05 to 2005-06 by invoking extended period of limitation. The show cause notice was replied by the appellant that they provided the services to Mutual Fund distributors in relation to the distribution of open ended mutual fund schemes. Distributors or Agents of Mutual Fund engage their services for effecting such distribution. For this purpose, they contact and interact with intending investors, who submit duly filled up forms and subscription money which they send to the mutual fund distributors. The commission income paid to them by the distributors of mutual fund company are out of the commission earned by them from MF companies and which have already suffered service tax, therefore, they are not liable to pay service tax. The matter was adjudicated and the adjudicating authority observed that the appellant has not produced any document in support of having received such payment from Mutual Fund companies, their distributors and asset management companies, as claimed by them and confirmed the demand proposed in the show cause notice. Against the said order, the appellant is before us.

3. Heard the parties.

4. It is evident from the impugned order that the appellant has not produced any document in support of having received the payment earned from Mutual Fund Companies, their distributors or from asset management companies as claimed by them. That, they were procuring orders for sale of Mutual Fund Schemes and received subscription, in that circumstances it would be in the interest of justice to remand matter back to the adjudicating authority with direction to the appellant to produce those documents before the adjudicating authority.

5. Therefore, we set aside the impugned order and remand the matter back to the adjudicating authority for fresh adjudication in accordance with law after examining the documents produced by the appellant in support of their claim. The appellant is directed to produce

all the relevant documents to the adjudicating authority within one month of receipt of this order, thereafter the adjudicating authority shall decide the issue in accordance with law within 3(three) months thereof.

Appeal is disposed of by way of remand.

(Operative part of the order was pronounced in the open Court.)

Sd/
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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