IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI

APPEAL NO: ST/87863/2014

[Arising out of Order-in-Original No: KLH-EXCUS-000-COM-024-13-14 dated 22/03/2014 passed by the Commissioner of Central Excise & Service Tax, Kolhapur.]

Mane & Co …***Appellant***

versus

Commissioner of Central Excise, Customs & Service Tax
Kolhapur ***…Respondent***

Appearance:

Shri J.N. Somaiya, Advocate for the appellant

Shri Vivek Dwivedi, Assistant Commissioner (AR) for the respondent

CORAM:

Hon'ble Shri Ramesh Nair, Member (Judicial)
Hon'ble Shri C J Mathew, Member (Technical)

Date of hearing: 26/02/2018
Date of decision: 13/04/2018

ORDER NO: A/86055 / 2018

Per: Ramesh Nair

The facts of the case are that the appellant are engaged in providing taxable service falling under categories of 'supply of tangible goods and site formation and excavation' and 'earth moving and demolition'. During the scrutiny of the records of the appellant, it was noticed that the appellant was supplying tangible goods, namely, bulldozers to various persons but not paying service tax on the amounts received. Accordingly, after detailed enquiry a show cause notice was issued for demanding service tax which has culminated into the adjudication order whereby the demand of service tax amounting to ₹71,13,269/- under the category of 'supply of tangible goods' during the period 16/05/2008 to 31/03/2012 was confirmed along with interest under Section 75. Penalty of ₹ 10,000/- under Section 77 and penalty of ₹ 71,13,269/- was imposed under Section 78. Being aggrieved by the order-in-original the appellant filed the present appeal.

2. Shri JN Somaiya, Learned Counsel appearing on behalf of the appellant, at the outset submits that the Learned Commissioner has not followed the principles of natural justice as no proper hearing was conducted. The appellant stated that they have filed a detailed submission. However, the adjudicating authority has passed the order. It is also submitted that the value of the service was arrived at without any basis. He submit that in the show cause notice straightaway demand was made assuming that the activity of the appellant is of supply of tangible goods and raised a demand. It was obligatory on the department to give details of their activities for which amount of ₹ 6,66,16,600/- was received by them during the material period of

dispute and then to explain with proper reasoning as to how and why the said activity fit into the definition of ‘supply of tangible goods service’. The department has not carried out any exercise to identify the activity correctly. Therefore, nevertheless, it is a violation of principles of natural justice. He further submits that the appellant already received a show cause notice covering the period which is covered in the show cause notice which is the subject matter of the present appeal and invoked the extended period. He submits that once the show cause notice was issued all the information was within the knowledge of the department and the second show cause notice invoking extended period is not legal and is time-barred as held by the Hon’ble Supreme Court in *Nizam Sugar Factory v. Commissioner of Central Excise [2006 (197) ELT 465 (SC)]*.

3. Shri Vivek Dwivedi, Learned Assistant Commissioner (AR) appearing on behalf of Revenue reiterates the findings of the impugned order.

4. We have carefully considered the submissions made by both sides.

5. Before going into the merit of the case, on going through the entire records, we find that it is evident that the principles of natural justice was not followed as the valuation of the service was taken on hypothetical basis and not attributed to the actual service. Moreover,

the appellant’s request for further submission was also not considered. In these circumstances for proper and reasoned adjudication the matter needs to be remanded. Accordingly we set aside the impugned order and remand the matter to the adjudicating authority for passing a fresh order after giving proper opportunities to the appellant to make submissions on all the issues which are kept open. The appeal is allowed by way of remand to the adjudicating authority.

(Pronounced in Court on 13/04/2018))

(C J Mathew)
Member (Technical)

(Ramesh Nair)
Member (Judicial)

**/as*