IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT NO. I

Appeal No. ST/88461/14 & ST/86353/15

(Arising out of Order-in-Original No. F.No. ST/Div.V/SCN-9/Phoenix/2010-11/3593 dated 15.5.2014 passed by the Commissioner of Service Tax, Mumbai-II).

M/s Phoenix International Freight Services Pvt. Ltd.	Appellant

Vs.

Commissioner of Service Tax, Mumbai-II	Respondent

Appearance:

Shri Vinay Jain, Advocate	for Appellant
Shri M. Suresh, DC (AR)	for Respondent

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MR. S. SRIVASTAVA, MEMBER (TECHNICAL)

Date of Hearing: 25.07.2018

Date of Decision: 25.07.2018

ORDER NO. **A/86998-86999/2018**

Per: Dr. D.M. Misra

Heard both sides.

2. These appeals are filed against two Demand-cum-Penalty Notices issued by the Commissioner of Service Tax, Mumbai-II.

3. At the outset learned Advocate for the appellant submits that as a matter of abundant precaution, these two appeals have been filed against Demand cum Penalty Notices issued by the Commissioner of Service Tax. It is his contention that even though both the notices were issued to the appellant, but opportunity was given to explain only in relation to the quantum of penalty, whereas the amount of Service Tax had been confirmed under Section 73(2) of the Finance Act, 1994 unilaterally without affording opportunity to the appellant in this regard. It is his contention that since they were aggrieved by the confirmation of Service Tax amount without affording opportunity to submit their say, therefore, the notices are bad in law. He submits that the matter may be remanded to the adjudicating authority to hear all the issues and pass an order accordingly.

4. Learned AR for the Revenue has no objection in remanding the matter.

5. We find that the Commissioner has issued a notice to the appellant to explain as to why penalty should not be imposed on them under various provisions after recording the fact that the Service Tax amount mentioned in the notice had become due and payable in view of the earlier orders dated 13.01.2012 and 31.01.2012. The grievance of the appellant is that they were not given an opportunity to explain the quantum of demand and also sustainability of the same. We find that the appellant has not been given opportunity to explain all the issues including the quantum of demand and their liability to discharge the same. In the interest of justice, the matter is remanded to the adjudicating

authority to decide all the issues after affording a reasonable opportunity to the appellant. All issues are kept open.

6. The appeals are allowed by way of remand.

(Operative portion of the order pronounced in Court)

(S. Srivastava) **Member (Technical)**	**(Dr. D.M. Misra)** **Member (Judicial)**

Sinha