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

APPEAL No.ST/86854/2018

(Arising out of Order-in-Appeal No.SK/GST (Audit-II)/MUM/31/Appeal Thane/2018 dated 05/03/2018 passed by the Commissioner CGST & CX (Audit-II), Mumbai)

Smt Poonam Vinayak Mestry : **Appellant**

VS

C.C. G.S.T, Thane : **Respondent**

Appearance

Shri.Dilip Joshi, Advocate for Appellant
Shri.O.M. Shivdikar, Asst. Comm. (A.R) for respondent

CORAM:

Hon'ble Shri S K Mohanty, Member (Judicial)

Date of hearing : 24/09/2018
Date of decision : 24/09/2018

ORDER NO.87605/2018

1. Heard both sides and perused the records.

2. Service tax demand under the taxable category of Business Auxiliary Service is the subject matter of the present dispute. The department contended that during the disputed period, the appellant did not pay service tax in respect of such taxable service provided by it. On the other hand, the appellant submitted that the gross value received by the appellant is inclusive of service tax and thus, the appellant was not liable to pay service tax on the entire gross value received from its clients. However, contrary to both the stand of Revenue as well as the appellant, the learned Commissioner (Appeals) has dismissed the appeal filed by the appellant on the ground that the

matter arising out of the present case has already been referred to Settlement Commission.

3. The appellant has assailed the impugned order on the ground that proceedings initiated earlier by separate show-cause notice was the subject matter of dispute before the Settlement Commission and with regard to the present show-cause notice, the matter has not been referred to Settlement Commission. Considering the fact that the grounds urged by the appellant have not been considered by the learned Commissioner (Appeals) and based on entirely different set of facts, the appeal was rejected by him, I am of the view that ends of justice will be met, if the matter is remanded to the Commissioner (Appeals) for a fresh decision on merits.

4. Therefore, after setting aside the impugned order, I remand the matter back to the Commissioner (Appeals) for proper appreciation of the facts of the case and for a detailed order on the issue involved in the appeal. Needless to say, that opportunity of personal hearing should be granted to the appellant before deciding the issue afresh.

5. In the result, the appeal is allowed by way of remand.

(Pronounced and dictated in court)

(S K Mohanty)
Member (Judicial)

PJ