

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

**AppIn.No.ST/MISC/92121/2017 & CO/91061/13
APPEAL NO.ST/85781/2013 & ST/85938/2013**

(Arising out of Order-in-Original No.34/ST-II/RS/2012 dated 30/10/2012 passed by the Commissioner of Service Tax, Mumbai-II & Review Order No.5/Review/CCO-1/MCX/2013 dated 04/02/2013 passed by the Committee of Chief Commissioners, Central Excise Mumbai Zone & II))

Svitzer Wijismuller Hazira Pvt. Ltd., : **Appellant**

VS

Commissioner of Service Tax, Mumbai-II : **Respondent**

:

Commissioner of Service Tax, Mumbai-II : **Appellant**

Vs.

: **Respondent**

Svitzer Wijismuller Hazira Pvt. Ltd.,

Appearance

Shri.V Sridharan, Sr. Advocate with
Shri Somesh Jain, CA & Shri Jay Chheda, CA, for Appellants
Shri.Roopam Kapoor, Comm. (A.R) for respondent

CORAM:

Hon'ble Dr. D.M. Misra, Member (Judicial)
Hon'ble Shri P Anjani Kumar, Member (Technical)

Date of hearing : 17/12/2018
Date of decision : 17/12/2018

ORDER NO. A/88194-88195/2018

Per : Dr. D.M. Misra

1. These two appeals are filed one by the Revenue and the second one by the assessee against the same order-in-original No.34/ST-

II/RS/2012 dated 30/10/2012 passed by the Commissioner of Service Tax, Mumbai-II. The assessee/appellant has also filed a miscellaneous application seeking to introduce additional grounds not mentioned in the grounds of appeal, while filing their appeal.

2. Briefly stated the facts of the case are that on the basis of the intelligence collected and later investigations carried out by the officers of DGCEI, it has been alleged that though the appellant during the relevant period April 2005 to 15/05/2008 and from 16/05/2008 to February 2010 provided services under the taxable category of "Port Services" and "Supply of Tangible Goods" services respectively, but failed to discharge service tax on the same. Consequently, demand notice was issued to them on 18/10/2010 for recovery of service tax not paid along with interest and penalty. On adjudication, the demand was confirmed with interest and penalty. Aggrieved by the said order, the assessee is in appeal.

3. Revenue has filed the appeal on the ground that the learned Commissioner has wrongly extended the benefit of discharging 25% of the penalty imposed under Section 78 of the Finance Act, 1994.

4. At the outset, the learned Advocate Shri V Sridharan, for the appellant submits that during the relevant period the appellant had supplied tugs and launches on hire to M/s.Hazira Port Pvt. Ltd., (HPPL) under a contract. It is his contention that for the demands confirmed against them, the supply of tugs and launches on hire was not directly a service to the vessel owners, but to M/s.HPPL. Hence, the services

rendered by them to M/s.Hazira Port Pvt. Ltd., cannot be considered as "Port Services". However, he has submitted that the impugned order is passed in gross violation of principles of natural justice, inasmuch as the Commissioner, who heard the matter has not passed the order, but subsequent Commissioner without hearing the appellant issued the present impugned order.

5. Per contra, Ld. AR for the Revenue Shri Roopam Kapoor submits that he has no objection to remand the matter to the adjudicating authority. However, the proceedings before the learned Commissioner be confined to the issues raised before him earlier and not the grounds now taken in the miscellaneous application.

6. In his rejoinder, the learned Advocate Shri V Sridharan for the appellant submits that once the order is passed in gross violation of principles of natural justice, the same becomes non-est in eyes of law and therefore, the proceedings goes back to the show-cause notice and accordingly the appellants are free to raise any issue in advancing their defense.

7. Heard both sides and perused the records.

8. On going through para 4 of the impugned order, we find that the Commissioner, who initially heard the case had not passed the order but the Commissioner, who took over subsequently, has passed the impugned order. Needless to emphasis this has resulted in gross

violation of principles of natural justice and accordingly the order deserves to be set aside.

9. We do not find any merit in the contention of the learned AR for the Revenue that the appellant would be precluded from raising additional arguments in their defense in the *denovo* proceedings and the present remand proceedings should put a restriction only to the issues raised earlier in their defense. Since we remand the matter to the adjudicating authority, in our opinion all issues should be examined afresh, taking into consideration the submissions on record and the plea that would be advanced in the *denovo* proceedings. In other words, all issues are kept open. Needless to mention, a reasonable opportunity of hearing be allowed to the appellants. The learned Advocate for the appellant submits that they would not seek unnecessary and unwarranted adjournment and co-operate with the adjudicating authority in completion of the *denovo* proceedings. Appeal is allowed by way of remand. MA & CO are disposed off.

(Pronounced and dictated in court)

(P Anjani Kumar)
Member (Technical)

(D.M. Misra)
Member (Judicial)

PJ