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

APPEAL No.ST/86164/2014

(Arising out of Order-in-Original No. 29/01/V/2014/COMMR/ANS/ST dated 7.2.2014 passed by Commissioner of Central Excise, Mumbai-V)

Raheja Universal Pvt. Ltd. **Appellant**

Vs.

Commissioner of Service Tax, Mumbai-I **Respondent**

Appearance:

Shri Bharat Raichandani, Advocate, for appellant
Shri Dilip Shinde, Assistant Commissioner (AR), for respondent

CORAM:

Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon'ble Mr. C.J. Mathew, Member (Technical)

Date of Hearing: 16.08.2018
Date of Decision: 16.08.2018

ORDER No. **A/88270/2018**

Per: S.K. Mohanty

This appeal is directed against the impugned order dated 7.2.2014 passed by the Commissioner of Central Excise, Mumbai-V, wherein service tax demand of Rs.23,95,850/- was confirmed along with interest and penalties were imposed under Sections 76 and 77 of the Finance Act, 1994. The service tax demand was confirmed on the ground that the taxable services, viz., 'business auxiliary service', 'management, maintenance or repair service' and 'health and fitness service', provided by the appellant are liable for payment of service tax. The dispute involved in the present case relates to the period October 2010 to March 2011.

2. Learned Advocate appearing for the appellant, at the outset, submitted that under the identical set of facts for the period July 2003 to September 2007, the orders dated 23.1.2012 and 26.4.2012 confirming the adjudged demands, were appealed against before the Tribunal, which were disposed of vide order dated 12.6.2017 (2017-TIOL-2275-CESTAT-MUM), allowing the appeals in favour of the appellant. Thus, he submitted that, since the period in dispute in the present case is from October 2010 to March 2011 and the position of law remains the same, the said decision of the Tribunal is squarely applicable for deciding the appeal in favour of the appellant.

3. On the other hand, the learned AR appearing for Revenue reiterated the findings in the impugned order.

4. Heard both sides and perused the case records.

5. On perusal of the impugned order, we find that the learned adjudicating authority in paragraph 12 has made a categoric finding that the show cause notice issued in this case is a daughter notice and the mother

notice issued by the Department had already been adjudicated vide order dated 20.1.2012. Both the daughter and the mother notices have alleged that the services provided by the appellant are confirming to the definition of taxable services under the category of ‘business auxiliary service’, ‘management, maintenance or repair service’ and ‘health and fitness service’. Since the appeal filed by the appellant against the adjudication order 20.1.2012 has already been set aside by the Tribunal vide order dated 12.6.2017, referred supra, in allowing the appeal in favour of the appellant, we are of the view that different stand cannot be taken at this juncture for deciding the appeal differently.

6. Therefore, we do not find any merits in the impugned order. Accordingly, after setting aside the same, the appeal is allowed in favour of the appellant.

(Pronounced in court)

(C.J. Mathew)
Member (Technical)

(S.K. Mohanty)
Member (Judicial)

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