CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH – COURT NO.405

Service Tax Appeal No. 88522 of 2018

(Arising out of Order-in-Appeal No. IM/CGST/A-I/MUM/47&48/18-19 dated 27.04.2018 passed by the Commissioner of Central Tax (Appeals), Mumbai-I.)

M/s Privi Organics Ltd ....Appellant
Unit No. 1, A-7, MIDC,
Mahad,
Raigad 402 309

VERSUS

Commissioner of Central Excise & Service Tax, Raigad ....Respondent
9th Floor, Piramal Chambers,
Jijibhoy Lane, Lalbaug,
Parel, Mumbai-400 012

WITH

Service Tax Appeal No. 88526 of 2018

(Arising out of Order-in-Appeal No. IM/CGST/A-I/MUM/47&48/18-19 dated 27.04.2018 passed by the Commissioner of Central Tax (Appeals), Mumbai-I.)

M/s Privi Organics Ltd ....Appellant
Unit No. 1, A-7, MIDC,
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VERSUS

Commissioner of Central Excise & Service Tax, Raigad ....Respondent
9th Floor, Piramal Chambers,
Jijibhoy Lane, Lalbaug,
Parel, Mumbai-400 012

APPERANCE:

Shri Raymond George, Advocate for the Appellant
Shri S.B. Mane, Assistant Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE SHRI AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO. A/86196-86197/2019

Date of Hearing: 12/06/2019
Date of Decision: 12/06/2019

PER: AJAY SHARMA

These Appeals have been filed by the Appellants from the impugned order dated 27.04.2018 passed by the Commissioner of Central Tax (Appeals), Mumbai-I in Order-in-Appeal No. IM / CGST / A – I / MUM /47 & 48/18-19 by which the learned commissioner dismissed the Appeals passed by the Appellant.

2. The issue involved in these appeals is regarding the service tax liability of the Appellants under the category of Goods Transport Agency Service. It is the case of Revenue that the appellants are liable to discharge the service tax liability as they had shown this amount in their balance sheet as freight charges paid. On the other hand it is the case of the Appellants that this amount which has been indicated in the balance sheet as freight charges, are actually paid to GTA, supplier of goods and is an amount less than Rs.750/-.

3. While dismissing the Appeals filed by the Appellant, the learned Commissioner recorded as under:-

> "6. **Discussions and Findings**: I have carefully gone through the facts of the cases, impugned orders and the appeal memo. The appellants have failed to produce the necessary documents for verification at the personal hearing, and haven't shown any signs of doing the same till date. I find that the appellants have made similar promises before departments authorities on multiple

> occasions. I am of the view that by suing such tactics, the appellants have prolonged the litigation without documents. The litigation has already completed one full circle and 2nd round is already on. They always stated before all the appellate authority that they have submitted all the documents. The Hon'ble tribunal having regard to the appellant submissions, directed that the original adjudicating authority to verify the documents stated to have been submitted and to extent the substantial benefit. It is incumbent upon the appellants to produce all the documents for verification before original adjudicating authority. However, they did not produce any documents to the original adjudicating authority and also failed to submit before the Commissioner (Appeals) during 2nd round of litigation. Therefore, the litigation has become vexatious. There is no reason to believe that the appellants have the necessary documents. In the absence of any evidence to support the claim of the appellants, there is no option but to go with the order."

When a specific query has been made to the learned counsel for the appellant as to why the appellant did not produce the evidences/relevant documents despite various opportunities granted, he replied that although the same were filed but both the authorities below have failed to looked into them. He further submitted that before both the authorities below, the Appellant had filed the paper book consisting of more than 500 pages alongwith the soft copy of ledger data. He also submitted that he had produced the Chartered Accountant Certificate before both the authorities below but that was also not considered. The ld. Counsel produced the same set of bulky documents before me also alongwith the Appeal Memo and submitted that whatever documents are relevant have been filed and if any other document is required, then the appellant is ready to produce the same subject to its availability. After seen the documents, I am of the opinion that these documents are required to be verified because without verification it cannot be taken into consideration and the adjudicating authority is the competent authority to verify these documents. Therefore without commenting upon these documents, I am inclined to set aside the impugned order and remand the matter to the Adjudicating Authority for de novo adjudication and the adjudicating authority shall pass the order after following the principle of natural justice and after giving a reasonable opportunity to the appellants to produce the documents in support of their claim. The Appellant is also directed to cooperate with the adjudicating authority and to produce all the documents available with them before the said Authority. The authority concerned must examine the eligibility of the Appellant's claim on the basis of documents which would be produced by the appellant. Additional documents, if required, are also permitted to be produced by the appellants during such de novo adjudication.

4. The Appeals are therefore allowed by way of remand.

(Dictated & pronounced in open Court)

(AJAY SHARMA)
Member (Judicial)

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