CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH – COURT NO.405

Service Tax Appeal No. 88362 of 2018

[Arising out of Order-in-Appeal No. PK/383/MC/2018 dated 09/05/2018 passed by the Commissioner of GST & Central Excise (Appeals II), Mumbai]

M/s P N Writer and Co P ltd. ....Appellant
105 Dr B Ambedkar Raod, Next to
Voltsagar, Kalahowky
Mumbai 400 033

VERSUS

C.C.G.ST., MUMBAI CENTRAL ....Respondent
GST Bhavan 115 MK Road Opp
Churchgate Station, Mumbai 400 020

APPERANCE:

Shri Durgesh Nadkarni, Advocate for the Appellant
Shri S.B. Mane, Asst. Commissioner,Authorised Representative for the Respondent

CORAM:

HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO. A/86198 / 2019

Date of Hearing: 10/04/2019
Date of Decision: 04/07/2019

AJAY SHARMA:

This Appeal has been filed against Order-in-Appeal No. PK/383/MC/2018 dated 09/05/2018 passed by the Commissioner of GST & Central Excise (Appeals), Mumbai.

2. The Appellant are registered for payment of service tax under business auxiliary service, business support service, rendering of immovable service as a provider of services and goods transport agencies service as receiver of service. During the course of audit for

the period 2007-08 to 2010-11, it was found that the Appellant had availed Cenvat credit in respect of service tax attributed to services such as Works Contract Service, Membership of Clubs, Event Management, Construction of Residential Complex Service and Commercial Construction Service, Credit Card Services, International Air Travel Agent & Event Management Services which are not eligible as input services in terms of Rule 2(l) (i) of the Cenvat Credit Rules, 2004 and therefore a show cause notice dated 19/04/2012 was issued to the Appellant demanding service tax amounting to Rs. 12,92,874/- for the aforesaid four years viz. 2007-08 to 2010-11. According to the department in line with the aforesaid show cause notice, information regarding the financial year 2011-12 was also called for from the Appellant subsequently *vide* letter dated 07/08/2012. Since the Appellant did not provide any information, therefore they left with no other option but to take recourse to Section 72 of the Finance Act, 1994 to arrive at the appropriate value. Accordingly, they took average of disallowed Cenvat credit for the aforesaid four years viz. 2007-08, 2010-11 which comes to Rs. 3,23,219/- and after multiplying this said amount three times, arrived at the figure of Rs. 9,69,657/- and issued a show cause notice date 19/04/2012, which is in issue in the instant appeal, demanding Cenvat credit amount of Rs. 9,69,657/- for the period 2011-12 alongwith interest and penalties. The said show cause notice dated 19/04/2012 was adjudicated vide Order-In-Original dated 24/05/2013 by which the aforesaid demand of service tax of

Rs. 9,69,657/- confirmed alongwith interest under Section 75 *ibid* and penalty under Section 78 *ibid*.

3. I have heard learned Counsel for the Appellant and Learned Authorised Representative on behalf of Revenue and perused the record. Learned Counsel submitted that before the Commissioner, the personal hearing was held on 13/09/2017 whereas impugned order was passed by the Learned Commissioner on 27/04/2018 i.e. after a delay of seven and half months. He further submitted that it is settled legal position that orders issued after such a long delay are not legally sustainable. He further submitted that due to this inordinate delay between hearing and passing of the order, the Commissioner got confused about the facts and legal points, and that he mixed up the submissions and quoted decision which were not at all relied upon by the Appellant. He further submitted that the Appellant had filed letter alongwith Additional written submissions before the Learned Commissioner vide letter dated 29/09/2017 and only the letter was acknowledged by the Commissioner in paragraph no. 10 of the impugned order without touching the written submissions. In this said written submissions, the Appellant have specifically mentioned that the total amount of all input services refer to in the impugned show cause notice comes to only Rs. 4,06,201/- whereas the show cause notice was issued for recovery of amount of Rs. 9,69,657/- which was erroneously confirmed by the adjudicating authority. But the learned Commissioner failed to give any finding on the aforesaid submission nor the said submission was recorded in the impugned order. According to him Real Estate Agent Service, Hotel

Catering Service and Event Management Service are occurring only once in four years and most of the other services have been used only twice in four years but still all these services were aggregated and an average has been worked out by multiplying it three times without explaining how it worked out and, therefore the same is totally illegal and in violation of the principle of natural justice. On the other hand, Learned Authorised Representative appearing on behalf of Revenue reiterated the findings in the impugned order and prayed for dismissal of Appeal. He submitted that opportunities were granted to the Appellant by the original authority as well as Appellate Authority but the Appellant failed to produce the document and rather they did not even appear for personal hearing before the adjudicating authority.

4. I have gone through the letter as well as the Additional written submissions dated 29/09/2017 filed by the Appellant before the learned Commissioner, which were produced by the learned Counsel before me at the time of hearing. By virtue of the letter dated 29.09.2017, the Appellant placed additional written submissions dated 29.09.2017before the learned Commissioner with a request to grant some more time to submit additional detail. A perusal of the said Additional written submissions *prima facie* show that the total amount of the impugned services comes only to Rs. 4,06,201/- but still the learned Commissioner confirmed the demand of Rs. 9,69,657/- without rejecting or discussing the aforesaid submissions filed by the Appellant. Although, the hearing was concluded on 13/09/2017 but the order was delivered in the month of April, 2018

therefore, in between the learned Commissioner could have given some more time to the Appellant to submit additional details as desired by them *vide* their letter dated 29/09/2017. Justice need not only be done but it should be seem to be done. In my view, the Appellant must produce the documents in support of the aforesaid submissions, which the Appellant was ready to produce before me, but the said documents needs to be verified. The adjudicating authority is the appropriate authority to verify these documents. So far as the issue of delay in pronouncement after conclusion of personal hearing is concerned it is settled position that the order needs to be passed within a reasonable period after the conclusion of hearing. Of course, delay of seven and half months in pronouncement is not a reasonable period but that itself cannot be a ground to set aside the order unless, the Appellant is put to prejudice on account of the delay. However, I am not inclined to test the correctness of the order on the ground of the delay, since I am of the opinion that the impugned order is not sustainable due to failure on the part of learned Commissioner to take into consideration the Additional written submission filed by the Appellant. Thus, considering the peculiar facts and circumstances of the case and without commenting upon the merits of the case, I am remanding matter to the adjudicating authority for de novo adjudication with a direction to pass the order after giving a reasonable opportunity of hearing to the Appellants to present their case. The Appellants are also directed to produce all the documents they wish to rely upon in support of their submissions before the adjudication authority.

5. The Appeal is therefore allowed by way of remand.

(Order pronounced in the open Court on 04/07/2019)

(Ajay Sharma)
Member (Judicial)

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