CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH – COURT NO.405

Service Tax Appeal No. 87770 of 2018

(Arising out of Order-in-Appeal No. CD/TR9APPEALS0/MC/198/2017-18 dated 09/02/2018 passed by the Commissioner of CGST & Central Excise, Thane Rural)

M/s Ganesh Enterprises ....Appellant
119/B, Govardhan Housing Society,
Delisle Road, N.M. Joshi Marg,
Mumbai 100 013.

VERSUS

C.C.G.ST., Mumbai Central ....Respondent
4th Floor, GST Bhawan,
Plot No. 24-C, Sector-E,
Bandra Kurla Complex,
Bandra (East), Mumbai 400 051

APPERANCE:

Shri Neerav R. Mainkar, 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/86222 / 2019

Date of Hearing: 23/04/2019
Date of Decision: 23/04/2019

AJAY SHARMA:

The instant appeal has been filed assailing the order dated 09/02/2018 passed by the Commissioner of CGST & Central Excise, Thane Rural in Order-in-Appeal No. CD/TR9APPEALS0/MC/198/2017-18 by which the Appeal filed by the appellant was rejected by the learned Commissioner.

2. According to learned Counsel the only issue in the matter is about the non-payment of service tax by the Appellant for the *"manpower recruitment or supply agency"* services provided by them to the units located in SEZ for the financial years 2011-12, 2012-13 and 2013-14 *(i.e. for the period from 1.4.2011 to 31.3.2014)* since according to the appellant the option of non-payment of service tax by the service provider on the services provided to SEZ Unit or Developer is available to the Appellant. As per Revenue, the exemption from payment of service tax of the services provided to SEZ units are governed by notification Nos. 17/2011-ST dt. 1.3.2011, 40/2012-ST dt. 20.6.2012 (wef 1.7.20123) and 12/2013-ST dt. 1.7.2013 and certain conditions prescribing in the said notifications are to be fulfilled in order to avail the exemption from payment of service tax, which the Appellant did not comply. Those conditions are:- (i) List of Taxable Services (specified services) as are required for the authorised operations approved by the approved committee of the concerned SEZ specified; and (ii) Declaration in Form A-1/Form A-2 as the case may be. From the records it came to my knowledge that as per show cause notice, the Service Tax liability was of Rs. 30,01,514/- with interest and penalty, but the same was reduced to 15,05,586/- with interest u/s. 75 and equal penalty u/s. 78 by the Adjudicating Authority because with effect from 1.7.2012 the Appellants was liable to pay only 25% of the service tax payable on the 'Man-power recruitment or supply agency' service provided in the SEZ units. The same was upheld by the learned Commissioner also in the impugned order.

3. The only reason to deny the exemption to the Appellant is that they failed to produce the documents/form A-2 as prescribed by the aforesaid three exemption notifications. According to both the authorities below, the Appellants failed to produce the necessary documents as envisaged in the exemption notifications. Whereas the learned counsel for the Appellant submitted that there was delay in submitting the Form A-2 as required by the aforesaid notifications, because it was to be submitted by the SEZ Units, but they submitted it belatedly on 11.5.2016 during the course of scrutiny, therefore there is no fault of the Appellants. He further submitted that despite the availability the aforesaid form A-2 which was submitted during the course of scrutiny, before even the issuance of show cause notice, none of the authorities below had taken any cognizance of it and that had they taken it into consideration they would have granted exemption to the Appellants. He also submitted that although he made a submission to this effect before both the authorities below but none of them had either recorded it or given any finding on it while passing the order. He also submitted that there is no monetary gain to the Appellants by not paying the Service Tax because they had not collected the same.

4. The moot issue for consideration in this Appeal is whether the Appellant are liable to pay service tax on the supply of *"manpower recruitment or supply agency"* services by them to the units located in SEZ, in view of the aforesaid exemption notifications. For availment of exemption notifications, the appellant was required to produce certain document, which according to learned counsel, the

Appellant did produce before the department as well both the authorities below but none of them have taken it into consideration. I find force in the contention raised by the learned counsel. Both the authorities below should have taken the documents produced by the Appellants and should have given a finding on it. Non-consideration of the same is nothing but violation of the principle of natural justice and vitiates the proceedings. Therefore without going into the merits of the matter, I am setting aside the impugned order and remanding the matter back to the adjudicating authority for a fresh consideration after affording reasonable opportunity of hearing to the Appellant. The said authority is directed to decide the issue afresh after taking into consideration all the submission and the documents produced by the appellants and also after verifying the same.

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

(Order pronounced in the open Court)

(Ajay Sharma)
Member (Judicial)

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