CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH AT MUMBAI

REGIONAL BENCH - COURT NO. 02

Service Tax Appeal No. 87207 of 2015

(Arising out of Order-in-Original No. 06/ST-VII/RS/2015-16 dated 29.06.2015 passed by Commissioner of Service Tax, Mumbai-VII)

M/s APL (INDIA) Pvt. Ltd. .....**Appellant**
247 Park, Hincon House, B-wing, 8th Floor, L.B.S. Marg, Vikhroli (West), Mumbai-400083

VERSUS

Commissioner of Service Tax-VII Mumbai .....**Respondent**
115, New Central Excise Building, M.K. Road, Churchgate, Mumbai-400020

Appearance:

Shri P. Paranjape, Advocate along with Ms. Ruchi Parmar, C.A. for the Appellant
Shri K.M. Mondal, Special Counsel for the Respondent

CORAM:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon'ble Mr. Sanjiv Srivastava, Member (Technical)

FINAL ORDER NO. A/86504 / 2019

Date of Hearing: 14.05.2019
Date of Decision: 14.05.2019

Per: S.K. MOHANTY

Heard both sides and perused the records.

2. This appeal is directed against the impugned order dated 29.06.2015 passed by the Commissioner of Service Tax-VII, Mumbai, pursuant to the remand direction contained in Final Order No. A/1379/2014-WZB/C-I (CSTB) dated 12.08.2014

passed by this Tribunal. The relevant paragraphs in the said order are extracted below:

> "4.1. As the issue lies in a narrow compass, we are of the view that the appeal itself can be disposed of at this stage and therefore, after waiving the requirement of any pre-deposit and with the consent of both the sides, we take up the appeal for consideration and disposal.
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> 4.2. The short question for consideration is whether the ocean freight, currency adjustment charges, bunkering charges, advance manifest charges collected by the appellant on behalf of the shipping lines can be subjected to levy of Service Tax. It is undisputed that most of these charges form part of the transaction value in respect of customs matters and therefore, the question of levy of Service Tax on a customs transaction would not arise at all. If the appellants have collected these charges and remitted the same to the shipping lines, the whole amount received and transmitted cannot be said to be a consideration for the services rendered. What can be levied to Service Tax is the service rendered by the appellant either as a steamer agent or BAS in respect of collection of freight and other charges and only on the consideration received for the services rendered, Service Tax can be levied. In this view of the matter, the impugned order is clearly not sustainable in law and the matter has to go back to the adjudicating authority for *de novo* consideration. The appellant is also directed to co-operate with the department and submit all the requisite particulars, such as, the amount of ocean freight and other charges collected by them and the amount transmitted by them to the foreign shipping lines and the amount of

consideration received/retained by them in respect of the services rendered and whether Service Tax liability has been discharged on the consideration received by them for rendering of the services. On submission of such information, the adjudicating authority shall examine the matter afresh and pass a speaking order after giving due opportunity of hearing to the appellant. Thus, the appeal is allowed by way of remand. Stay petition is also disposed of."

3. Pursuant to the order dated 12.08.2014, the original authority took up the *de novo* adjudication proceedings and passed the present impugned order dated 29.06.2015. The primarily submissions made by the appellant is to the effect that the principles of natural justice have been violated inasmuch as no effective personal hearing was granted to the appellant before deciding the matter afresh. In this context, the appellant has referred to the personal hearing notice dated 30.10.2014 and the letter dated 17.11.2014 addressed by the appellant to the adjudication authority. Further, the Learned Advocate appearing for the appellant submitted the written note, explaining that the matter has not been adjudicated in line with the remand order passed by the Tribunal. The submissions made in the written note are extracted herein below:

"1. No personal hearing was given to the Appellant. The hearing purported to be given is in context of another show cause notice.

2. Order in Original ('OIO') confirms demand on charges other than included in the Show Cause Notice ('SCN'). SCN was restricted only with respect to service tax demand on Ocean freight ('OCF'), Bunker adjustment charge ('BAF'), Currency Adjustment charge ('CAF') and Advance Manifest Charge ('AMS').

3. OIO confirms the demand on the amounts not included in the SCN. OIO has taken an arbitrary method to confirm the demand

i.e. data given on remand minus data given in original proceeding, thereby exceeding the demand amount raised in the SCN.

4. OIO is beyond remand direction – Tax demand confirmed on CAF and AMS. Remand was only to verify remittance outside India.

5. Tax demand confirmed for period April 2007 to September 2007 is beyond SCN.

6. Duplication of demand to the extent Chennai and Kolkata locations have also been issued notices for period May 2006 to March 2011 and April 2006 to March 2010 respectively.

7. A new case made out in the OIO to the extent commenting on pure-reimbursement and reference to Service Tax Valuation Rules 2006.

8. Ignored that Appellant has indeed remitted what was collected on behalf of the principal-APL Co Pte Limited."

4. On perusal of the notice dated 13.10.2014, fixing the date of personal hearing, we find the said notice does not contain the reference of show cause notice in question, which was adjudicated vide the impugned order dated 29.06.2015. Further, we also find that the personal hearing of the present show cause notice was held on 17.11.2014; whereas, the appellant was asked to furnish the details vide the letter dated 02.02.2015 issued by the department. On this sequence of events, it can be concluded that the *de novo* adjudication proceedings were not completed in proper manner inasmuch as the findings recorded in the order dated 12.08.2014 of the Tribunal has not been properly adhered to. Therefore, we are of the considered view that the matter should again be remanded to the original authority for a fresh fact finding on all the issues involved in the case. Accordingly, the matter is remanded to the original authority for re-adjudication. It is made clear that while passing the fresh adjudication order, the Learned Commissioner

should consider all the aspects involved in the case, so that there will be no scope for any further remand. Since, this is a second round of litigation before the Tribunal, it is expected that the *de novo* adjudication proceedings should be completed within a period of 3 months from the date of receipt of this order. Needless to say, that opportunity of personal hearing should be granted to the appellant before deciding the issue afresh.

5. In the result, the appeal is allowed by way of remand to the original authority.

(Dictated and pronounced in the open court)

(S.K.Mohanty)
Member (Judicial)

(Sanjiv Srivastava)
Member (Technical)

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