CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH

SERVICE TAX MISCELLANEOUS APPLICATION NO: 85295 of 2019
(on behalf of appellant)

IN

SERVICE TAX APPEAL NO: 85952 of 2017

[Arising out of Order-in-Original No: 01/ST/Cmmr/2017 dated 19th January 2017 passed by the Commissioner of Central Excise, Customs & Service Tax, Aurangabad.]

The Latur & Osmanabad Mathadi and Unptrotected Labour Board
Kisan Bhavan, APMC Building, 3rd Floor (West Side)
Chhatrapati Shivaji Market Yard, Latur – 431 512 … ***Appellant***

versus

Commissioner of Central Excise, Customs & Service Tax
N-5, Town Centre, CIDCO, Aurangabad – 431 030 ***…Respondent***

APPEARANCE:

Shri RG Sheth with Ms Pinky Jagwani, Advocates for the appellant

Shri M Suresh, Joint Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE DR SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO: A/87421 / 2019

DATE OF HEARING: 27/11/2019
DATE OF DECISION: 27/11/2019

PER: C J MATHEW

This dispute arises from the confirmation of demand of ₹6,48,30,607/- for the period from October 2010 to 28th February 2016, along with interest thereon, and imposition of penalty of like amount under section 78 of Finance Act, 1994 in order-in-original no. 01/ST/Cmmr/2017 dated 19th January 2017 of Commissioner of Central Excise, Customs & Service Tax, Aurangabad.

2. It is the contention of Learned Counsel that the demand covers the period before the introduction of the 'negative list' and thereafter dispute which the adjudicating authority has held them to be liable as a provider of 'manpower recruitment or supply agency service'. It is his contention that, in the negative list era, the definition of 'service' in section 65B(44)(b), the allegation itself would fail to sustain as the provider of service by an employee to the employer would be beyond the scope of taxation. It is also contended that various decisions have held that functions, such as that of the appellant were not services but statutory responsibilities made to promote the welfare of unskilled workers. According to him, the various contentions which were raised in the miscellaneous application filed here, though not raised before the original authority, would have a bearing on the taxability.

3. We have heard Learned Authorised Representative who submits that the decision relied upon by Learned Counsel affirms the tax liability and, therefore, it would appear that the appeal itself should be dismissed.

4. The grounds now intended to be incorporated in the appeal arises from the provisions of the law and from settled judicial disputes. Accordingly, the miscellaneous application for additional ground is allowed.

5. The additional grounds bring up issues on which the original authority was not provided an opportunity to record its finding. This is a necessary pre-requisite for disposal of the appeal.

6. In view of the above, we set aside the impugned order and direct the matter to be decided afresh by original authority after taking note of the submissions of the noticee into account.

7. The appeal is accordingly disposed off.

(Pronounced in open court)

(C J Mathew)
Member (Technical)

(Dr. Sevendust Kumar Patti)
Member (Judicial)

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