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

REGIONAL BENCH - COURT NO. 02

Service Tax Appeal No. 88571 of 2018

(Arising out of Order-in-Appeal No. NA/GST A-III/MUM/545-546/17-18 dated 12.03.2018 passed by Commissioner (Appeals-III), GST & Central Excise, Mumbai)

M/s Sarjak Container Lines Private Limited .....**Appellant**
8th Floor, DLF Plaza Cosmos Building
Opp Shoppers Stop S.V. Road,
Andheri (W), Mumbai – 400 058.

VERSUS

Commissioner of CGST, Mumbai West .....**Respondent**
Mahavir Jain Vidyalaya, Juhu Lane, Andheri (West), Mumbai - 400058

WITH

Service Tax Appeal No. 88572 of 2018

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VERSUS

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<u>Appearance:</u>

Shri Darshan Ranawat, Chartered Accountant for the Appellant
Shri Sudhir B. Mane Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

FINAL ORDER NO. A/87169-87170/2019

Date of Hearing: 21.11.2019
Date of Decision: 21.11.2019

Per: S.K. MOHANTY

These appeals are directed against the impugned order dt. 12.03.2018 passed by the Commissioner (Appeals-III), GST & Central Excise, Mumbai.

2. Brief facts of the case are that the appellants are registered with the service tax department for providing logistic services. During the course of scrutiny of balance sheet for the disputed period, the department observed that the appellants had received advances from the customers, but did not discharge the service tax liability thereon. Accordingly, proceedings were initiated against the appellant, seeking for confirmation of the service tax demand on the amount of advance received from the customers. The matter was adjudicated against the appellant in confirming the adjudged demands. The appellant has assailed the impugned order mainly on the following grounds:

(a) They have received the advances.

(b) They did not know at the time of accepting advances whether the advance is for providing taxable or non-taxable services.

(c) They received excess amount from their customers in the form of deposits and which was liable to be refunded as and when refund of the same is claimed by the customers and the appellants raised invoices if the advance was adjusted subsequently against the invoices and paid the taxes.

(d) They have not paid taxes on advances as the Act cannot compel to do that which is impossible and therefore benefit of 'lex non cogit and impossibilia' be given.

3. Heard both sides and perused the records.

4. I find that in support of the contentions that the advance received from the customers is not towards providing any taxable service, the appellants have not produced any substantive evidence before the Ld. Commissioner (Appeals), for which the appeals were dismissed by him. Since, the onus to prove that the advance received is not towards provision of any service has not been substantiated by any documentary evidences, I am of the view that confirmation of the adjudged demands by the authorities below is in conformity with the statutory provisions. However, the Ld. Consultant strenuously submits that the appellant had maintained the records/register to demonstrate that the advances received were not for provision of any service and that the said documentary evidences were produced before the original authority. Considering the fact and the submissions made by the appellants that it had maintained adequate records to substantiate that the advances received from the customers were not towards provision of any service, I am of the view that the ends of justice would be met, if the matter is remanded to the original authority for verification of the said documentary evidences to be submitted by the appellant. On examination of the records, if the original authority is satisfied that the advances received is

not towards provision of any taxable service, then no service tax demand shall be confirmed on the appellant. On the contrary, if the appellant fails to prove in support of documentary evidences that the advance received from the customers is towards provision of taxable service, then the original authority will be at liberty to invoke the statutory provisions including the penal provisions for adjudication of the matter.

5. In the result, these appeals are allowed by way of remand to the original authority.

(Dictated and pronounced in the open court)

(S.K.Mohanty)
Member (Judicial)

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