CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, <u>MUMBAI</u>

REGIONAL BENCH - COURT NO. 02

Service Tax Appeal No. 85995 of 2015

(Arising out of Order-in-Original No. GOA-EXCUS-000-COM-019-2014-15 dated 30.01.2015 passed by Commissioner of Central of Central Excise, Goa)

Rohit Equipments .....**Appellant**
'Vasant' Near Ferry Wharf, Old Goa,
Goa – 403 402.

VERSUS

Commissioner of Central Excise, Goa. .....**Respondent**
Ice House EDC Complex Plot No. 6 Patto,
Panaji Goa – 403 001.

<u>**Appearance:**</u>

Shri Bharat Raichandani, Advocate for the Appellant
Shri M. Suresh, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO. A/87462/2019

Date of Hearing: 17.05.2019

Date of Decision:17.05.2019

Per: S.K. MOHANTY

This appeal is directed against the impugned order dated 30.12.2015 passed by the Commissioner of Customs, Central Excise

& Service Tax, Goa. Vide the impugned order, the Ld. Adjudicating Authority has confirmed service tax demand of Rs. 3,04,33,826/- along with interest and also imposed penalties under Section 77 & 78 of the Finance Act, 1994. The said adjudged demands were confirmed on the ground that during the disputed period, the appellant did not discharge the service tax liability in respect of the taxable services viz. Mining, Supply of Tangible Goods and Transportation Services provided to its clients.

2. The Ld. Advocate appearing for the appellant submitted that neither the show cause notice nor the impugned order have discussed the nature of activities undertaken by the appellant and simply reproduced the statutory provisions therein to conclude that the appellant is liable to pay service tax. He further submitted that the adjudged demands were quantified based on invoices and financial statements, without reference to the nature of actual transactions made by the appellant. The Ld. Advocate has also referred to the letters dated 23.11.2012, 08.01.2013 and 15.07.2013 addressed by the appellant to the department contending that the basis of computation of the tax liability has not been provided. Thus, the Ld. Advocate submitted that the principles of natural justice have been violated and as such, confirmation of the adjudged demands cannot be sustained.

3. On the other hand, the Ld. AR appearing for the Revenue reiterated the findings recorded in the impugned order.

4. Heard both sides and perused the records.

5. We find that the appellant in its aforementioned communications addressed to the jurisdictional service tax authorities had specifically requested for providing the particulars with regard to the basis of computation of the service tax liability. Further, the appellant also stated that the documents/records relating to the case matter were still lying with the investigating wing of the department. Hence, under such circumstances, the

proceedings initiated by the department for confirmation of the adjudged demands cannot be sustained. We also find that the submissions of the appellant that the invoices were prepared on the basis of accrual income on which service tax liability cannot be fastened has also not been considered at the original stage. Thus, we are of the considered view that the tax liability has been computed and confirmed in the impugned order in gross violation of the principles of natural justice and for that purpose, the issues involved in the case are required to be re-examined at the original level.

6. Therefore, the impugned order is set aside and the matter is remanded to the original authority for adjudication of the matter afresh. The original authority should provide the requisite information/documents to substantiate the basis of computation of the service tax liability on the appellant and upon receipt of the defence reply, if any, from the appellant, the re-adjudication process should commence and be completed within a reasonable time frame. Needless to say, that opportunity of personal hearing should be granted to the appellant before deciding all the issues afresh.

7. In the result, the appeal is allowed by way of remand.

(Operative part of the order pronounced in the open court)

(S.K. Mohanty)
Member (Judicial)

(Sanjiv Srivastava)
Member (Technical)

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