CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

Service Tax Appeal No: 88580 of 2014

[Arising out of Order-in-Original No: PUN-EXCUS-001-COMMISSIONER-005-006-14-15 dated 26th May 2014 passed by the Commissioner of Central Excise, Pune – I.]

Divgi Warner Pvt Ltd
75, General Block, MIDC, Bhosari, Pune - 411 026 … ***Appellant***

versus

Commissioner of Central Excise
Pune – I
ICE House, 41/A Sassoon Road, Pune – 411 001 ***…Respondent***

APPEARANCE:

Shri Sachin Chitnis, Advocate for the appellant

Shri Atul Sharma, Asstt Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR P DINESHA, MEMBER (JUDICIAL)

FINAL ORDER NO: A/88573 / 2018

DATE OF HEARING:	01/05/2018
DATE OF DECISION:	01/05/2018

PER: C J MATHEW

This appeal arises from order-in-original no. PUN-EXCUS-001-COM-005-006-14-15 dated 26th May 2014 of Commissioner of Central

Excise, Pune -I in which two show cause notices for the period from April 2008 to March 2012 and for the period from April 2012 to March 2013 are disposed off disposed of by determining tax liability of ₹35,33,928 and ₹ 1,21,832 respectively under section 73 of Finance Act, 1994 against proposal for recovery of ₹ 7,11,236 and ₹ 4,78,230 respectively, along with interest thereon, and imposing penalty under section 77 and 78 of Finance Act, 1994.

2. Learned Counsel submits that the demand was sought to be enforced on payments made by appellant to overseas entities for procurement of 'business auxiliary service', taxable under section 65(105)(zzb) of Finance Act, 1994 and, that too, without reference to any transactions. The specific transactions identified by the appellant were, according to him, the sole basis for confirmation of the demands. Contending that the impugned order had erred in not considering the submissions that accounting practice had been misinterpreted for multiplicating the actual transaction, that the admitted liability had been discharged well before the issue of show cause notice, that some of the payments related to supplies on which further manufacture, with liability to duties of central excise, was evidenced, and that some of these services had been undertaken outside the country, the findings, as well as the order of recovery, was claimed to be untenable.

3. We have heard Learned Authorised Representative.

4. It would appear that the detailed submission made by the appellant herein as response to the show cause notices, including computational errors and lack of simultaneous jurisdiction to tax under Central Excise Act, 1944 and Finance Act, 1994, have not been considered in the impugned order. In the absence of a counter to these submissions, we are unable to evaluate the claims now made before us. The adjudicating authority is required to apply its mind to the contentions for which purpose, we set aside the impugned order and remand the matter back for a fresh decision.

(Pronounced in open court)

(C J Mathew)
Member (Technical)

(P Dinesha)
Member (Judicial)

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