CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

SERVICE TAX APPEAL NO: 86590 OF 2015

[Arising out of Order-in-Appeal No: NGP/EXCUS/000/APP/008/15-16 dated 9th April 2015 passed by the Commissioner of Central Excise & Customs (Appeals), Nagpur.]

Aditya Enterprises
Anandvan, Row House No. 7,
Kamatwada, Nashik – 422 010 … ***Appellant***

versus

Commissioner of Central Excise, Customs & Service Tax
Kendriya Rajaswa Bhavan, Gadkari Chowk
Nashik – 422 002 ***…Respondent***

APPEARANCE:

None for the appellant

Shri OM Shivadikar, Assistant 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/87558 / 2019

DATE OF HEARING:	06/09/2019
DATE OF DECISION:	06/09/2019

PER: C J MATHEW

This appeal of M/s Aditya Enterprises, a proprietorship concern, against order-in-appeal no. NGP/EXCUS/000/APP/008/15-16 dated 9th April 2015 of Commissioner of Central Excise & Customs (Appeals), Nagpur challenges the modification of the confirmed demand to ₹ 8,28,336 instead of ₹ 7,64,793 for the period from April 2008 to March 2012. The chargeability of tax is not in dispute and appellant has already remitted ₹ 7,33, 566 towards the liability.

2. None appeared for the appellant but, with the assistance of Learned Authorised Representative, we find that the limited prayer for remand can be considered in the absence of representation.

3. According to the appellant, the show cause notice had erred in basing the demand on alleged turnover ₹ 14,08,658 instead of ₹ 7,95,688 for 2008-09 which brings them below the threshold of taxation, on alleged turnover of ₹ 49,48,398 instead of ₹ 46,72,380 for 2009-10 which led to excess demand of ₹ 26,126 and on alleged turnover of ₹14,12,611 instead of ₹ 10,49,490 leading to excess demand of ₹37,408. Of this, the first appellate authority allowed the threshold exemption but upheld the excess demand of ₹63,534, even after conceding that the invoices should have been perused before arriving at the finding on the demand for 2009-10 and 2011-12, by noting that it was not possible to be done at his end.

4. This, in our view, is not an appropriate disposal of the appeal as the remedies for proper computation have not been resorted to.

Accordingly, we set aside the impugned order and remand the matter back to the first appellate authority for disposing of the appeal afresh.

(Pronounced in open court)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

(C J Mathew)
Member (Technical)

**/as*