CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH, MUMBAI

Service Tax Miscellaneous Application No. 85867 of 2021

IN

Service Tax Appeal No. 85633 of 2019

(Arising out of Order-in-Appeal No. NGP/EXCUS/000/APP/266/18-19 dated 27.11.2018 passed by the Commissioner of GST & Central Excise Tax (Appeals) Nagpur.)

M/s Mihan India Ltd. ....Appellant
1st Floor, Old Terminal Building, Dr.
Babasaheb Ambedkar International Airport,
Wardha Road, Nagpur – 440 005.

VERSUS

Commissioner of Central Excise & Service Tax, Nagpur ....Respondent
P. O. Box 81, Telangkhedi Road,
Civil Line, Nagpur – 400 001

APPERANCE:

Shri P. V. Sadavarte, Advocate for the Appellant
Ms. A. S. Parab, Assistant Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO. A/85196 / 2022

Date of Hearing: 04.01.2022
Date of Decision: 11.03.2022

Appeal that was heard on 04.01.2022 is taken up for order today.

2. Factual back drop of the case, in a nutshell, is that appellant is a government concern joint venture company in charge of Dr. Baba Saheb International Airport, Nagpur which was providing works contract service within the Airport premises including new construction and renovation work. During the course of audit for the financial year 2014-15 to 2016-17 it was notice that appellant had not paid service tax in respect of four invoices amounting of Rs.6,87,763/- for which show cause notice demanding service tax with interest and penalty was issued though appellant had deposited an amount of Rs.6,24,034/- immediately after the audit report incompliance to its noting. Therefore, appellant have contested only part of the demand but the entire interest and penalty. Original authority confirmed the demands raised in show cause and Commissioner (Appeals) only partly allowed the appeal that had relation with pure supply of goods. Appellant is before this Bench challenging the legality of such order.

3. During the course of argument learned counsel for the appellant Mr. P. V. Sadavarte, in filing petition for acceptance of additional grounds, argued that on point of law appellant has a strong case since benefit of Entry No. 14(A) of the Notification No. 25/2012-ST dated 20.06.2012 read with Notification 9/2016-ST dated 01.03.2016 as amended, had not been extended to the appellant in which services by way of construction, erection, commissioning or installation of original work pertaining to airport, port or railway etc. were exempted from service tax and application of the said notification would cover the major period of transactions

made by the appellant. However, he conceded that this fact of application of exemption notification were not brought to the notice of the authorities below nor raised as a ground of appeal but being a pure law point, in view of the decision reported in *"Utkarsh Corporate Services V/s Commissioner of Central Excise and Service Tax (High Court of Gujrat at Ahmedabad=2014 (34) S.T.R 35 (Gujrat)",* Appeal can be decided having regard to the exemption notification and its amended provision. Learned AR Ms. A.S. Parab for the Respondent-Department also confirms that the above referred notification has not been dealt in the Order-in-Original & Order-in-appeal.

4. I have perused the said judgments of the Hon'ble High Court of Gujrat passed in respect of Central Excise and Service Tax matter and found that the ratio of the judgment of the Hon'ble Supreme Court reported in *(1998) 229 ITR 383* had been taken, the relevant portion of which reads:

> *"Undoubtedly, the Tribunal has the discretion to allow or not to allow a new ground to be raise. But where the Tribunal is only required to consider the question of law arising from facts which are on record in the assessment proceedings, there is no reason why such a question should not be allowed to be raised when it is necessary to consider that question in order to correctly assess the tax liability of an assessee."*

5. While, accepting the additional grounds raised in the appeal as pure law points, it is to be noted here that the power of the Central Excise & Service Tax Appellate Tribunal is limited to the examination of legality of the order passed by the Commissioner (Appeals) and not like the Commissioner (Appeals)'s power under Section 35A(3) of

the Central Excise Act, 1944 that authorises him to make such further enquiry as may be necessary and pass such order as he finds just and proper…

6. Since, in the instant case exemption notification would only cover part of the disputed period, its application to the entire proceeding can only be determined by the adjudicating authority. In the absence of any finding on its application for wants of its invocation at the time of adjudication proceedings, it would be just and proper to remand the matter back to the original adjudicating authority for fresh adjudication concerning application of Notification No. 25/2012-ST and its amended Notification No. 9/2016-ST, so as to arrive at a conclusion on the sustainability of such duty demand including invocation of the extended period and hence the order:

ORDER

7. The appeal is allowed by way of remand for readjudication by the original adjudicating authority and accordingly the order passed by the Commissioner of GST & Central Excise Tax (Appeals) Nagpur vide Order-in-Appeal No. NGP/EXCUS/000/APP/266/18-19 dated 27.11.2018 is set aside.

(Order pronounced in the open court on 11.03.2022)

(Dr.Suvendu Kumar Pati)
Member (Judicial)

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