CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH - COURT NO. 01

Service Tax Appeal No. 87111 of 2018

(Arising out of Order-in-Appeal No. 59-GH-2017-18 dated 27.02.2018 passed by Commissioner of CGST & CX. Thane – Audit Mumbai)

Siddhivinayak Constructions .....**Appellant**
409/410, 4th Floor, Mahindra Chambers, 619/28, W T Patil Marg, Chembur, Mumbai – 400 071.

VERSUS

Commissioner Central Goods And Service Tax – Navi Mumbai .....**Respondent**
10th Floor, Satra Plaza, Palm Beach Road, Sector 19 D, Vashi, Navi Mumbai – 400 705.

Appearance:

Shri Bharat Raichandani, Advocate for the Appellant
Shri Nitin Ranjan, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85813/2022

Date of Hearing : 18.04.2022
Date of Decision : 18.04.2022

PER : S.K. MOHANTY

Feeling aggrieved with the impugned order dated 27.02.2018, the appellant has preferred this appeal before the Tribunal.

2. Learned Advocate appearing for the appellant, at the outset, submitted that the original authority had passed the adjudication order Ex-parte, without affording reasonable opportunity of hearing to the appellant. Thus, he pleaded that there is violation of the principles of natural justice and accordingly, the matter should go back to the original

authority for fresh adjudication of the issue, arising out of the show cause notice. He also submitted that on an identical issue, involving the same subject matter, the Tribunal in the case Commissioner of CGST and Central Excise, Thane V/s. M/s. Ethics Infra Development Private Ltd 2022-TIOL-97-CESTAT-MUM, Vasantha Green Projects V/s. Commissioner of C.T GST, Rangareddy – 2019 (20) G.S.T.L. 568 (Tri. – Hyd.), and DLF Commercial Project Corporations Vs. Commissioner of Service Tax 2019-TIOL-1514-CESTAT-CHD has allowed the appeal in favour of the party. Accordingly, he submitted that while considering the matter afresh, the original authority should also examine the relied upon the decision and to pass afresh adjudication order.

3. On the other hand, learned A. R. appearing for Revenue reiterated the findings recorded in the impugned order.

4. Heard both sides and examine the case records.

5. We find that the original authority at paragraph 5.1 in the adjudication order dated 07.04.2017 has stated that he is taking up the matter for adjudication and passing the order ex-parte inasmuch as the appellant did not appear for the personal hearing fixed on several dates. Further, on examination of the records, we find that the appellant had filed the writ petition before the Hon'ble Bombay High Court, challenging the Circular dated 10.02.2012 issued by the CBEC. Such facts is evident from the paragraph 4 in the adjudication passed by learned Additional Commissioner. Thus, it transpires that the principles of natural justice

have not been properly followed, while passing both the adjudication as well as the impugned order by the lower authorities. Hence, under such facts and circumstances of the case, we are of the considered view that the matter should go back to the original authority for fresh adjudication of the dispute.

6. Therefore, by setting aside the impugned order, we remand the matter to the original authority for fresh adjudication, and for that purpose, the adjudicating authority should examine the evidences, including the judgements relied upon by the learned Advocate for the appellant. Needless to say, that the appellant should be given the opportunity for presenting its case, before adjudication of the matter.

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

(Dictated and pronounced in the open court)

(S. K. Mohanty)
Member (Judicial)

(P. Anjani Kumar)
Member (Technical)

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