CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH - COURT NO. 01

Service Tax Appeal No. 86091 of 2016

(Arising out of Order-in-Original No. 15/COMMR(RS)LTU-M/S.TAX/2015 dated 29.01.2016 passed by Commissioner of Central Excise & Service Tax (LTU), Mumbai)

M/s. Shipping Corporation of India Ltd. .....**Appellant**
Shipping House, 245, Madame Cama Road, Mumbai-400021.

VERSUS

Commissioner of Central Excise & Service Tax, LTU, Mumbai .....**Respondent**
29th Floor, Centre-I, World Trade Centre,
Cuff Parade, Mumbai-400005.

Appearance:

Shri Bharat Raichandani, Advocate for the Appellant
Shri Anand Kumar, 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/86111/2022

Date of Hearing: 05.01.2022
Date of Decision: 05.01.2022

PER : S.K. MOHANTY

This appeal is directed against the impugned order dated 29.01.2016, wherein the learned Commissioner of Central Excise & Service Tax, LTU, Mumbai has confirmed service tax demand of Rs. 8,18,39,878/- along with interest and also imposed penalties under Section 77 & 78 of the Finance Act, 1994 on the appellant. In the said impugned order, the learned adjudicating authority has held that Upfront Fee/Management Fees/Processing Fee/Facility Agent Fee/Commitment Fee/Other Banking Charges, which have been charged by the Banks, based outside India, shall be treated as taxable service under the category of "Banking & Financial Services", defined under Section 65(105)(zm) of the Finance Act, 1994; that Insurance Premium charged by the Insurance Companies, shall be treated as taxable service under the category of "General Insurance Business Services" as defined under Section 65(105) (d) of the Finance Act,1994; Legal & Professional Fees, which is charged by the Legal &Professional Advisors, shall be treated as taxable service under the category of "Legal Consultancy Services" as defined under Section 65 (105) (zzzzm) of the Finance Act, 1994.

2. Learned Advocate appearing for the appellant submitted that the overseas lenders are located in Singapore and are duly incorporated and registered under the laws of Singapore and that they do not transact business of banking in India; therefore the said lenders cannot be considered as "Banking Company" under the Banking Regulation Act, 1949 read with Reserve Bank of India Act, 1934. Thus, learned Advocated submitted that since the overseas lenders are not falling within the purview of Section 65 (12) of the Finance Act, 1994, the service tax demand cannot be fastened on the appellant as a recipient of service, under reverse charge mechanism. With regard to levy of service tax on legal services, learned Advocate contended that such services were provided by the foreign legal entities and since those entities are not recognized or registered under the Advocates Act, 1961, service tax demand on such service cannot be confirmed on the appellant under Section 65(105)(zzzm) *ibid*. As regards to the disputed service under the category of insurance services, learned Advocate contended that the insurers are located and also registered under the laws of Singapore and that they do not transact business of Banking in India. Hence, learned Advocate submitted that the services provided by the overseas entities for providing the insurance service to the appellant cannot be termed as a taxable service defined under Section 65(105) (d) *ibid*. Learned Advocate further submitted that the submissions made before the original authority were not considered in proper perspective and as such, the matter should go back to the original

authority by way of remand for proper fact findings on all the issues involved in this appeal.

3. On the other hand, learned AR appearing for the Revenue reiterated the findings recorded in the impugned order and supported confirmation of the adjudged demands.

4. Heard both sides and perused the records.

5. We find that the learned adjudicating authority at pages 25, 34 and 36 in the impugned order, though has recorded the submissions made by the appellant during the course of adjudication of the show cause proceedings; but, such submissions were not properly examined factually and applicability of the relevant statutory provisions to the facts of the present case were also not addressed to in the impugned order. For proper and effective adjudication of the matter, the submissions made at the original stage were necessarily required to be examined, which in the present case have admittedly not been complied with. The learned adjudicating authority has mainly proceeded to confirm the service tax demand on import of services under Section 66A *ibid* holding that the appellant is statutorily required to discharge the service tax liability as a recipient of service under reverse charge mechanism. However, the moot question as to whether the overseas entities are covered by various provisions under the Finance Act, 1994 has not been addressed to or decided in the impugned order. Hence, we are of the considered view that the original authority is required to look into all the aspects involved in this case afresh for passing of a reasoned/speaking order.

6. In view of above, the impugned order is set aside and the matter is remanded back to the original authority for re-adjudication of the matter. All the issues on merits as well as on limitation are kept open for consideration at the time of re-adjudication of the dispute. Needless to say, that the appellant should be given a reasonable opportunity to present their case, which should be

considered by the original authority at the time of the the *de novo* adjudication order.

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

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

(S. K. Mohanty)
Member (Judicial)

(Sanjiv Srivastava)
Member (Technical)

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