CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH - COURT NO. 01

Service Tax Appeal No. 86743 of 2022

(on behalf of Appellant)

(Arising out of Order-in-Original No. 02/RB/Commissioner/Belapur/2022-23 dated 31.05.2022 passed by Commissioner of CGST & Central Excise, Navi Mumbai)

M/s Bitush & Rajib Construction Pvt. Ltd. .....**Appellant**
1304 Mayuresh Chamber, Plot 6, Setor 11, CBD Belapur, Navi Mumbai-400614.

VERSUS

Commissioner of CGST And Central Excise-Belapur .....**Respondent**
C.G.O. Complex, 1st Floor, Sector-10, CBD Belapur, Navi Mumbai-400614.

Appearance:

Shri V. M. Doiphode, Advocate for the Appellant
Shri Nitin Ranjan, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M. M. PARTHIBAN KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85302/2023

Date of Hearing: 22.02.2023
Date of Decision: 22.02.2023

PER : S. K. MOHANTY

Heard both sides and examined the case records.

2. Learned Commissioner of CGST and Central Excise, Belapur has passed this impugned order in confirming service tax demand of Rs.53,73,89,250/- along with interest on the appellant. Besides, the said order has also imposed penalties under Section 77 and 78 of the Finance Act, 1994 read with Section 174 of the CGST ACT, 2017.

3. Learned Advocate appearing for the appellant submitted that the show cause notice issued by the Department was not communicated to the appellant in the address known to the

Department. Further, he also submitted that the issue arising out of the present dispute has already been settled under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019. Thus, he submitted that the second show cause notice issued by the Department is not maintainable inasmuch as the Form IV in respect of such scheme has already been issued by the Department in acknowledging the due discharge of the liability by the assessee as per Section 129 of the Scheme.

4. On the other hand, Learned Authorized Representative appearing for the Revenue reiterated the findings recorded in the impugned order and further submitted that the second show cause notice was issued by the Department on detailed investigation into the matter regarding non-payment of service tax on entirely different transactions which were not known to the Department at the time of initiation of the show cause proceedings earlier. Thus, he submitted that the adjudication order passed in response to the second show cause notice is proper and justified and the appellant is liable to pay the adjudged demands confirmed in the impugned order dated 31.05.2022.

5. On careful examination of the show cause notice vis-à-vis the impugned order passed by the Department, we find that the show cause notice dated 30.12.2020 issued to the appellant was not communicated to them as per the manner prescribed in the statute. From the available records, it also transpires that the show cause notice was obtained by the applicant through the RTI application filed before the Department. Since, the matter arising out of the show cause notice dated 30.12.2020 was adjudicated behind the back of the appellant inasmuch as no opportunity of personal hearing was granted for filing the defence reply and for making the case in proper manner, we are of the view that there is gross violation of the principles of natural justice, for which matter is required to be remanded back to the original authority for proper adjudication of the issues involved in the case. Further, from the submissions made by both sides, we find that there is confusion with regard to the matter of issuance of first show cause notice and the subsequent show cause notice inasmuch the issue arising out of first show cause notice was resolved under the Sabka Vishwas

(Legacy Dispute Resolution) Scheme, 2019, for which Form IV was issued by the Department in acknowledging the liability and discharge of such liability by the appellant. Thus, we are in utter confusion as to how and under what circumstances, the show cause proceedings were initiated by the Department. Thus, it is expected that while adjudicating the matter afresh, the learned original authority should highlight and elaborate on the issue regarding issuance of the two show cause notices, in respect of the same period of dispute.

6. In view of above discussions, the impugned order is set aside and the appeal is allowed by way of remand to the original authority for passing of the fresh adjudication order. It is made clear that all the issues are open for discussion by the original authority. Before adjudication of the matter, learned Adjudicating Authority should follow the principles of natural justice. Further, it is also felt desirable that the original authority should complete the adjudication proceedings, preferably within a period of 6 months from the date of receipt of this order.

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

(Dictated and pronounced in the open court)

(S. K. Mohanty)
Member(Judicial)

(M. M. Parthiban)
Member (Technical)

Sm/ys