CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH - COURT NO. 01

Service Tax Appeal No. 86848 Of 2021

(Arising out of Order-in-Original No. MUM.SOUTH/CGST/Pr. Commr-55 to 60/20-21 dated 08.02.2021 passed by The Principal Commissioner of Central GST & C. Excise, Mumbai South)

Bhatia Shipping Private Limited .....**Appellant**
62, Shipping House, Kumatha Street, Ballard Estate, Mumbai-400 001.

VERSUS

Commissioner of CGST & Central Excise, Mumbai South .....**Respondent**
13th Floor, Air India Building, Nariman Point, Mumbai-400 021.

Appearance:

Shri Mahesh Raichandani, Advocate for the Appellant
Shri A. K. Shrivastava, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO. A/87011/2023

Date of Hearing: 18.10.2023
Date of Decision: 18.10.2023

PER : S. K. MOHANTY

Heard both sides and perused the records.

2. This is the second round of litigation before the Tribunal. In the first round, the adjudication order dated 31.07.2012 was appealed against before the Tribunal. The Tribunal vide Order No. A/496 to 498/13/CSTB/C-I dated 21.02.2013 had remanded back the matter to the original authority, with the following observations:

> "*We have perused the impugned order. We find the learned adjudicating authority has dismissed the appellant's contention on the ground that they did not produce Chartered Accountant's certificate to satisfy the department that the duty is being demanded for the second time or that they have paid duty on the value of reimbursements received by them. Inasmuch as the appellant has submitted the reconciliation statement, though belatedly, and the same has not been taken into account by the adjudicating authority, the matter needs to go back to the adjudicating authority to examine the reconciliation statement and also the Chartered Accountant's certificate with regard to the payment of service tax and, thereafter decide the matter afresh with regard to the service tax liability of the appellant. Needless to say that the appellant should be heard before passing any order on fresh consideration. All issues are kept open for decision.*"

3. Pursuant to the said order dated 21.02.2013, the original authority took-up *de novo* adjudication proceedings and passed the impugned order dated 08.02.2021 in confirming an amount of Rs.84,12,507/- as proposed for recovery in the SCN dated 21.10.2009 issued for the period 2004-05 & 2005-06 and SCNs dated 11.10.2013 & 16.01.2015 for the period 2012-13 & 2013-14. In the said order, the original authority has dropped the balance amount of demand of Rs.80,42,504/- for the period 2006-07 to 2011-12. Besides, the impugned order has also confirmed the interest demand and imposed penalties under various provisions of the Finance Act, 1994.

4. The original authority has dropped the proposed demand of Rs.80,42,504/- on the ground that as per the requirement of the Order dated 21.02.2013 the assessee-appellant had provided the Reconciliation Statement together with the certificate issued by the Chartered Accountant. The balance demand of Rs.84,12,507/- was confirmed by him on the ground that the assessee-appellant though assured to provide the records did not submit the records within the time frame fixed by the original authority. Further, no reason was given by the assessee-appellant for their non-submission of records in their letter dated 02.02.2021 to the original authority. On perusal of the impugned order, we find that the Order dated 21.02.2013 passed by the Tribunal has been duly complied with by the original authority by passing the impugned order on the basis of available documents.

5. When the matter was called for hearing today, learned Advocate submitted that though the appellant had prayed for extension of time for submission of the required documents, but the same were not arranged during the material time and the original authority has passed the order in confirming the adjudged demands. He further submitted that the reconciliation statement and the certificate issued by the Chartered Accountant are available with the appellant for examination by the original authority. Since, the appellant through its Advocate submits that the desired documents are available for verification, we are of the view that the matter should go back to the original authority for verification of the records/ documents and for passing of the adjudication order accordingly.

6. Therefore, the impugned order is set aside and the matter is remanded back to the original authority for the limited purpose of examination of the records/documents with regard to the confirmation of service tax demand of Rs.84,12,507/- confirmed in the impugned order as referred above and for passing of the adjudication order on the basis of the available records. Needless to state that opportunity of personal hearing should be granted to the appellant before passing of the fresh adjudication order. The appellant is also directed to cooperate with the adjudication proceedings and should not insist for unnecessary adjournment.

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

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

(S. K. Mohanty)
Member(Judicial)

(M. M. Parthiban)
Member (Technical)

Sm/kpw