CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH - COURT NO. 01

Service Tax Appeal No. 86856 Of 2016

(Arising out of Order-in-Original No.GOA-EXCUS-000-COM-002-2016-17 dated06.05.2016 passed by Commissioner of Central Excise and Service Tax, Goa)

M/s Vaibhavi Shipping P Ltd .....**Appellant**
Karma Empress No. 5 to 15,
1st Floor, opp. Lakshya Jyot Complex,
Near KTC Bus Stand, Mundvel, Vasco,
Goa-403 802.

VERSUS

Commissioner of Central Excise & Service Tax, Goa .....**Respondent**
ICE House, EDC Complex, Plot No. 6, Patto,
Panaji, Goa-403 001.

Appearance:

Shri Mahesh Raichandani, Advocate for the Appellant
Shri Priyesh Bheda, 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/85030/2024

Date of Hearing: 08.01.2024
Date of Decision: 08.01.2024

PER : S.K. MOHANTY

This appeal is directed against the impugned order dated 06.05.2016 passed by the Learned Commissioner of Central Excise and Service Tax, Goa, wherein service tax demands were confirmed in respect of various taxable services provided by the appellant. The disputed services involved in this appeal are 'Transport of goods through inland waterways', 'supply of tangible goods' and 'renting of immovable property'. The show cause notices dated 14.11.2014and 07.04.2015, issued by the Department, in categorical terms had stated that the appellant did not co-operate in the investigationprocess inasmuch as the relevant records/documents were not submitted before the department for scrutinization of the activity undertaken by them and for confirmation of service tax demand on such taxable services.

2. Learned Advocate appearing for the appellant submitted that the show cause notices as well as the impugned order had solely relied upon the income tax returns filed by the appellant for arriving at the conclusion that the amount indicated in those returns are in context with the provision of taxable service under the taxable categories mentioned above. Thus, he submitted that for ascertaining the actual service tax liability, the department was required to examine various records/documents including the agreements entered into between the appellant and service recipient, invoices, the book of accounts, etc., maintained by them. Since, those documents were not relied upon or verified by the Department, the Learned Advocate prayed for remanding the matter back to the original authority for proper fact finding with regard to levy of service tax on the disputed category of services provided by them.

3. On the other hand, Learned AR appearing for the revenue reiterated the findings recorded in the impugned order and also brought our notice to the show cause notices as well as the adjudication order to show that the appellant did not submit the relevant records for verification by the Department with regard to provision of the taxable services and levy of service tax thereon.Thus, he submitted that in absence of the proper documentation, since the Department has relied upon the income tax returns for confirmation of the adjudged demands, such action on the part of department cannot be faulted with and hence, the impugned order passed in confirming the adjudged demands is legal and proper.

4. Heard both sides and examined the case records.

5. We find that the show cause notice at paragraphs no. 3 and 4 have taken the contradictory stand inasmuch as at the first instance, the Department had pleaded that no documentary evidenceswere produced by the appellant. On the contrary,by going through the submissions made by the appellant in the appeal memorandum as well as in the correspondences exchanged by them

with the Department, we find that certain documents were submitted by the appellants before adjudication of the matter, which were not taken into consideration for adjudication of the dispute. Since, there were contrary stand taken from both sides with regard to submission and examination of the relevant documents/records, we are of the view that the issues in hand should again be examined for a proper conclusion, whether the appellant is required to be fastened with the service tax liability or otherwise, in respect of the services provided by them. It is made clear that income tax returns are not sacrosanct record for consideration of the service tax liability, inasmuch as the former considers various element of income over and above the amount received towards provision of taxable service(s). Since, the aspects concerning actual earnings towards provision of taxable services have not been considered and the impugned order was passed solely based on the income tax returns, we are of the view that ends of justice would be met, if the matter is remanded back to the original authority for fresh adjudication of the matter, in line with our above observations.

6. Therefore, by setting aside the impugned order, the appeal is allowed by way of remand to the original authority,with a direction to pass the d*e novo* order based on the available documents and those to be submitted by the appellant at the time of personal hearing. It is made clear that the appellant should co-operate in the *de novo* adjudication proceedings and should not seek for un-necessary adjournment.

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)

Sinha/kpw