(2024) 04 CESTAT CK 0026

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 55501 Of 2023

M/s Sheetal Engineering — APPELLANT

Vs

Commissioner Of CGST & Central Excise — RESPONDENT

Date of Decision : 15-04-2024

Acts Referred:
Finance Act, 1994 — Section 73

Citation : (2024) 04 CESTAT CK 0026

Hon'ble Judges : Ajay Sharma, Member (J)

Bench : Single Bench

Advocate : Rajnish Kumar Verma, Arun Sheoran

Final Decision : Allowed

Judgement

Ajay Sharma, Member (J)

1. This appeal has been filed from the impugned order dated 28.03.2023 passed by the Commissioner (Appeals) by which the learned Commissioner rejected the appeal filed by the appellant and upheld the Order-in-Original dated 31.01.2022 by confirming the service tax demand of Rs. 15,62,019/- u/s. 73 of the Finance Act, 1994 alongwith interest and penalty under various provisions of the Act.

2. I have heard learned counsel for the appellant and learned Authorised Representative on behalf of Revenue and perused the case records. Learned counsel for the appellant raised a preliminary submission that in support of its claim the appellant failed to produce the required evidences/documents before the Adjudicating Authority and the same were produced before the learned Commissioner (Appeals) i.e. the first appellate authority but the learned Commissioner failed to looked into those documents while passing the impugned order and he prayed for remand of the matter before the authority below for fresh adjudication after taking into consideration those documents/evidences. Per contra, learned Authorised Representative appearing on behalf of Revenue submits that despite ample opportunities given, neither the appellant replied the

show cause notice nor attended any of the personal hearing before the Adjudicating Authority. He further submits that before the learned Commissioner also no evidence/documents were produced by the appellant in support of its claim.

3. Be that as it may, justice must not only be done, but must also be seen to be done. Learned counsel very fairly submitted that the appellant did not produce any evidence/documents in support of its claim before the lower authority. Without deliberating on the issue whether they were produced before the learned commissioner or not, in my view the Adjudicating Authority is the appropriate authority to appreciate those documents before whom, admittedly neither the appellant appeared nor submitted any documents/evidence. Therefore, without going into the merits of the matter, I am inclined to remand the matter to the Adjudicating Authority for de novo adjudication after going through the evidences/documents to be produced by the appellant before the said Authority. The appellant is directed to appear and produce all the documents/evidences they wish to rely upon, as and when the date is fixed by the Adjudicating Authority. Needless to mention that the said authority must give a proper opportunity of hearing to the appellant.

4. The impugned order is accordingly set aside and the appeal is allowed by way of remand.