(2021) 12 CESTAT CK 0028

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 10784 Of 2019

Mundra Container Freight Station Pvt Ltd — APPELLANT

Vs

C.C.E., Kutch, Gandhidham — RESPONDENT

Date of Decision : 07-12-2021

Acts Referred:

Citation : (2021) 12 CESTAT CK 0028

Hon'ble Judges : Ramesh Nair, J

Bench : Single Bench

Final Decision : Allowed

Judgement

1. Shri Paresh Sheth, learned Counsel appearing on behalf of the appellant raised preliminary objection that the statement calculating the short

payment of service tax is not correct inasmuch as the bank receipt was shown which is different from the bank statement available with the appellant.

Therefore, there is calculation error. He submits that the appellant even before the Adjudicating Authority, categorically asked for the details of

clarification vide their letters dated 06.11.2015, 22.03.2016, 05.04.2016 and 23.04.2016 addressed to the Adjudicating Authority, however, no

clarification was given by the Adjudicating Authority and passed the order without considering the aforesaid letters.

2. Shri G. Kirupanandan, learned Superintendent (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order. He submits

that the figures of ST-3 return was taken from the ST-3 return submitted by the appellant and the bank statements and as per the bank ledgers

submitted by them at the time of audit. Therefore, there is no discrepancy in the working out of differential service tax demand.

3. I have carefully considered the submissions made by both the sides and perused the record. I find that the gross value received is shown in the ST-

3 return, for example, in the month of April 2009, as per the ST-3 return, the gross receipt is Rs. 1,56,63,650/- and after deduction of value of

exempted services, it comes to Rs. 62,31,716/-. Whereas in the statement showing the calculation of short payment of service tax, in the column of

bank receipt, the figure shown is Rs. 70,13,066/- which is not tallying with the ST-3 return. For this discrepancy, the appellant have written letters

dated 06.11.2015, 22.03.2016, 05.04.2016 and 23.04.2016 to the Adjudicating Authority for seeking clarification for this calculation. However, the

Adjudicating Authority in Para 14 of adjudication order has not given any clarification on the ground that all the calculation and working was carried by

CERA audit very much in the presence of the appellant and at this juncture, this is not relevant. I completely disagree with the stand taken by the

Adjudicating Authority. Whenever any show cause notice is issued the same should have each and every data from the relied upon document with the

department. The department cannot say that the calculation was done in the presence of noticee and the same is conclusive. Therefore, as per the

principles of natural justice, the Adjudicating Authority is duty bound to give clear clarification on the working of differential service tax with the

support of necessary documents such as bank statement/ ledger and ST-3 return etc.

4. Therefore, the entire matter needs reconsideration. Accordingly, the impugned order is set-aside and the appeal is allowed by way of remand to the

Adjudicating Authority for passing afresh order after providing clarification to the queries raised in letters referred above and also after granting

personal hearing. The appellant is also directed to produce the bank statement/ ledger in support of their claim of discrepancy in the calculation of

differential service tax. Appeal is allowed by way of remand to the Adjudicating Authority.

(Dictated and pronounced in the open court)

