In The Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

Application No.ST/ORS/10726-10727/2018-DB
Appeal No.ST/10673,10719,10720/2015-DB
Appeal No.ST/10844-10845/2017-DB

[Arising out of OIO-SUR-EXCUS-001-COM-047-049-14-15 dated 18.09.2014 passed by the CCE&ST(A) – Surat-I]

[Arising out of OIO-SUR-EXCUS-001-COM-043-16-17 dated 13.01.2017 passed by the CCE&ST(A)-Surat-I]

M/s Shiva Industrial Security Agency Secunderabad Appellant
Shiva Industrial Security Agency (Guj.) Pvt. Ltd. Secunderabad
Shiva Industrial Security Agency
Shiva Industrial Security Agency Gujarat Pvt. Ltd.

Vs

C.C.E. & S.T., Surat-I Respondent

Represented by:
For Appellant: Mr. P.P. Jadeja (Consultant)
For Respondent: Mr. Sameer Chitkara (AR)

CORAM:
HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. RAJU, MEMBER (TECHNICAL)

Date of Hearing:19.12.2018
Date of decision:02.01.2019

Final Order No. A/ 10007-10011 /2019

Per: Ramesh Nair

In all these appeals the issue involved is demand of service tax on the security service provided by the appellant.

2. Shri. P.P. Jadeja, Ld. Consultant appearing on behalf of the appellant, at the outset, submits that there are serious errors in quantification of the demand, there are also various discrepancies in the order. He submits that appellant's common balance sheet was considered for taking the service value at Surat as well as at Sicunderabad, therefore, there is a duplicacy of demand. He given the synopsis wherein he pointed out various other errors in the order. He

prays that the matter may be remanded for a fresh decision after carefully verifying the duplicacy of the demand and other aspects.

3. Shri. Sameer Chitkara, Ld. Additional Commissioner (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order. He submits that if at all this bench is inclined to remand the matter, timeline may be fixed for passing a de novo order.

4. We have carefully considered the submissions made by both the sides and perused the records, we find that the appellant have raised a very important issue that the demand on the basis of balance sheet data was made in Surat as well as Secunderabad. Since the balance sheet is same which contain the data of Surat as well as Secunderabad, there cannot be a demand on the same balance sheet twice which leads to the duplicacy of demand. However, this aspect was not carefully examined by the adjudicating authority. As per the appellant's submission following discrepancies were also pointed out:

1. The demand was raised for more than five years.
2. Even for the period subsequent to visit of the officers, the demand was raised for extended period.
3. The demand was raised on the basis of opening balance plus income, total debtors receipt claim by party concerning all of these as taxable value which apparently incorrect.
4. There are payments received back as retention amount from the receiver of service which has been considered as taxable income.
5. Additional service tax liability was made by way of addendum to SCN without considering the revised income tax return.

5. All the above discrepancies pointed out by the appellants needs a careful verification of documents and records and if it is found the

apparent error in the impugned order, the same needs to be addressed by the adjudicating authority. In this position, there is no option except to remand the matter to the adjudicating authority. We make it clear that the adjudicating authority should not get influenced by our above observation. The adjudicating authority should first verify carefully all the factual aspects on the issues raised by the appellant and thereafter pass an independent order. Since this matter came up in the second round before this Tribunal, in the interest of justice, we are of the view that the matter should be decided in a time bound manner. We, therefore, direct the adjudicating authority to pass de novo order within a period of 4 months from the date of this order. All issues are kept open. All the appeals are allowed by way of remand to the adjudicating authority.

(Pronounced in the open court on 02.01.2019)

(Raju)
Member (Technical)

(Ramesh Nair)
Member (Judicial)

Neha