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

REGIONAL BENCH- COURT NO.3

Service Tax Appeal No.10988 of 2019

(Arising out of OIA-VAD-EXCUS-001-APP-535-2018-19 dated 21/12/2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-I)

Theo Desh Consultants **........Appellant**

82-83, 3rd Floor Suriyakiran Complex,
Near Banker's Heart Institute, Old Padra Road
Vadodara, Gujarat

VERSUS

C.C.E. & S.T.-VADODARA-I **.......Respondent**

1st Floor...Central Excise Building,
Race Course Circle, Vadodara,
Gujarat-390007

APPEARANCE:

Shri. A.X.S. Jiwan, Consultant, for the Appellant
Shri. G. Kirupanandan, Superintendent (AR) for the Respondent

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

Final Order No. A/ 10215 /2022

DATE OF HEARING: 01.03.2022
DATE OF DECISION: 01.03.2022

RAMESH NAIR

This appeal is directed against the Order-In-Appeal No. OIA-VAD-EXCUS-001-APP-535-2018-19 dated 21.12.2021 whereby the Learned Commissioner (Appeals) has remanded the matter in appeal filed by the Revenue to the adjudicating authority, on the ground that as per the Tribunal's earlier remand order the matter was supposed to be reconsidered for which the adjudicating authority had sought verification from the Field Officers. The Revenue filed the appeal before the Commissioner (Appeals) on the basis of verification report issued by the Assistant Commissioner of Central GST & Central Excise, Bhuneshwar, Commissionerate, to the adjudicating authority namely the Additional Commissioner (Adjudication) vide letter dated 05.03.2018. The Revenue filed an appeal on the ground that this verification report was not considered by the adjudicating authority as the same was received after the adjudication order was passed. Considering the prayer in the appeal of the Revenue, the Learned Commissioner (Appeals) remanded the matter to the adjudicating authority. Being aggrieved by the Order-In-Appeal, the assessee M/s. Theo-Desh Consultant filed the present appeal.

2. Shri. A.X.S Jiwan, Learned Consultant appearing on behalf of the appellant submits that the entire basis of filing appeal by the Revenue as well as the passing of order by the Learned Commissioner (Appeals) is the letter dated 05.03.2018 The said Letter is a fresh evidence relied upon after passing the adjudication order, therefore, the said evidence cannot be taken for the purpose of filing appeal, hence, the Learned Commissioner (Appeals) has wrongly remanded the matter to the adjudicating authority as he was supposed to dismiss the appeal of the Revenue .

3. Shri. G. Kirupanandan, Learned Authorized Representative appearing on behalf of the Revenue reiterates the finding of the impugned order. He submits that in the last round of the appeal by this Tribunal, the matter was remanded to ascertain the payment of Service Tax on the services in question. In compliance of the direction of the Tribunal the adjudicating authority has conducted the verification through the Field Officers, however, the report was not received before that the adjudication order was passed. He submits that the letter dated 05.03.2018 which is verification report cannot be said to be a fresh evidence as the report was given on the basis of existing records and document and in compliance to the Tribunal's order, therefore, the Learned Commissioner (Appeals) has rightly considered the same and remanded the matter to the adjudicating authority.

4. I have carefully considered the submission made by both the sides and perused the records.

5. The appellant is mainly aggrieved by the Letter dated 05.03.2018 which was issued post de novo adjudication, however, this Tribunal in the earlier round of appeal remanded the matter to the adjudicating authority for passing a fresh order after verifying the fact about the payment of Service Tax. In compliance of the Tribunal's order the adjudicating authority had conducted

the verification through the field officer, however, the report was received by the adjudicating authority post adjudication order passed by the adjudicating authority.

6. In this position, I am of the view that the verification report given by the Field Officer, during the subsequent passing of the order needs to be considered, therefore, the Learned Commissioner (Appeals) in the Revenue's appeals rightly remanded the matter to the adjudicating authority for passing afresh order after considering the report dated 05.03.2018, therefore, do not find any infirmity in the order of the Commissioner (Appeals) whereby the matter was remanded to the adjudicating authority. The assessee has liberty to rebut the observations made in the verification report on the basis of records and documents.

7. Accordingly, the impugned order is upheld. Appeal is dismissed.

(Dictated and pronounced in the open court)

(RAMESH NAIR)
MEMBER (JUDICIAL)

Prachi