Loop Mobile (India) Ltd. Vs. Commissioner of Central Excise, Thane

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : May-15-2012

Judge : The Honourable Mr. Ashok Jindal, Member (Judicial) &Amp; the Honourable Mr. P.R. Chandrasekharan, Member (Technical)

Appeal No. : Appln.No.ST/S/2005/11 APPEAL No.ST/664/11 (Arising out of Order-in-Original No.46/BR-46/Th-I/20

Appellant : Loop Mobile (India) Ltd.

Respondent : Commissioner of Central Excise, Thane

Advocate for Pet/Ap. : For the Appellants : Shri. V. Sridharan, Advocate. For the Respondent : Shri.Navneet, Dy. Comm. (AR).

Judgement :

Ashok Jindal

1. The appellants are in appeal along with application for stay of the impugned demand. The facts of the case are that a show-cause notice was issued for the period 01/04/2003 to 31/03/2004 for demand of differential service tax on the basis of difference between ST-3 returns and value of service provided in their profit and loss accounts.

2. In reply to the show-cause notice, the appellant filed a reconciliation statement along with a certificate issued by the Chartered Accountant although in the

impugned order, the same has been recorded, the demands have been confirmed against the appellant. Aggrieved by the said order, the appellants are before us.

3. The Ld. Advocate submits that in the impugned order, the Commissioner has not given any findings on the reconciliation statement/certificate of Chartered Accountant issued by them during the course of adjudication; therefore, impugned order is a non-speaking order and stay may be set aside.

4. Heard the Ld. Counsel and perused the impugned order.

5. On going through the impugned order, we find that in reply to the show-cause notice, the appellant has filed the reconciliation statement for the difference on their taxable service shown in ST-3 returns and profit and loss accounts. The said reconciliation has been supported by the certificate issued by the Chartered Accountant, but the adjudicating authority has not given any findings to the defence taken by the appellants; therefore, the impugned order is a non-speaking order. In view of these observations, we waive the requirement of pre-deposit of entire demand and taken up the appeal for final disposal.

6. As the impugned order is non-speaking on the defence taken by the appellant; therefore, we remand the matter back to the adjudicating authority to consider the defence taken by the appellant in reply to the show-cause notice and thereafter pass a speaking order in accordance with the law. It is pertinent to mention here that a reasonable opportunity be given to present their case.

7. The appeal as well as stay application is disposed of in the above terms.