

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL, MUMBAI
REGIONAL BENCH
COURT No. 5**

Service Tax Appeal No. 85378 of 2024

(Arising out of Order-in-Appeal No. CSM/422/RGD APP/2023-24 dated 09.11.2023 passed by the Commissioner of CGST & Central Excise, Raigarh)

Surendra Gundu Shetty

Appellant

42, Din Dayal Cross Road,
Bedekar Galli, Thakurwadi-1,
Dombivali, Dist. Thane 421 202

Vs.

Commissioner of Cen. Excise & ST, Belapur

Respondent

CGO Complex, 1st Floor, Sector 10,
CBD Belapur, Navi Mumbai 400 614.

Appearance:

Shri Ashwini Kumar, Advocate, for the Appellant

Shri A.K. Srivastava, Assistant Commissioner, Authorised
Representative for Respondent

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

Date of Hearing: 28.06.2024

Date of Decision: 01.08.2024

FINAL ORDER NO. 85731/2024

PER: ANIL G. SHAKKARWAR

Brief facts of the case are that the appellant is a fruit seller and is not engaged in any activity on which service tax is leviable and, therefore, did not obtain Service Tax registration. On the basis of data received from Central Board of Direct Taxes, a show cause notice dated 04.12.2020 was issued to the appellant at an address in Vashi, Navi Mumbai stating that the nature of services provided by the appellant were not covered under the negative list and that vide letter dated 27.02.2020 certain information was called from the appellant and no data was received from the appellant and, therefore, service tax paid by the appellant was treated as zero and by invoking the provisions under Section 72 of Finance Act, 1994, best judgment method was adopted and service tax payable by the appellant for the period from April 2015 to June 2017 was estimated at around Rs.6,00,000/- and the same was demanded from the

appellant. The original order dated 19.03.2022 was passed *ex parte* and the demand was confirmed and penalties were imposed. The original order was also sent to Vashi, Navi Mumbai address. When the enquiries were initiated for recovery, appellant came to know about passing of order and he sent a communication dated 18.11.2022 requesting to provide certified copies of the order-in-original dated 19.03.2022 and informed the officer of Revenue that the appellant was out of the ambit of Service Tax taxation and, therefore, not in a position to make pre-deposit of 7.5% of the confirmed demand for filing appeal. Subsequently, he filed appeal before Commissioner (Appeals) informing the learned Commissioner (Appeals) that his correct address was 42, Janubhau Smruti Chawl, Din Dayal Road, Near Bedekar Galli, Thakurwadi-1, Dombivli (West), Thane 421202. Learned Commissioner (Appeals) has rejected the appeal filed before him as time barred. Aggrieved by the said order, appellant is before this Tribunal.

2. Heard the learned counsel for the appellant. Learned counsel for the appellant has submitted a copy of affidavit filed by Mrs. Sumati Kariya Shetty along with copy of Aadhaar card of Mrs. Sumati Kariya Shetty and a copy of electricity bill for the month of May 2024 indicating that Mrs. Sumati Kariya Shetty was residing at 42, Janubhau Smruti Chawl, Din Dayal Road, Near Bedekar Galli, Thakurwadi-1, Dombivli (West), Thane 421202 and that the appellant Mr. Surendra Gundu Shetty is a relative and is presently living with her since 2010 and utilizing the said residential premises for his business of fruit sale since 2012. Appellant has also submitted a copy of PAN card and Aadhaar card establishing that his address is at Dombivli and not at Vashi, Navi Mumbai. Learned counsel has further submitted that the appellant neither received a copy of show cause notice nor received copy of order-in-original since both of them were sent to an address in Vashi, Navi Mumbai and on filing an application dated 18.11.2022, appellant received certified copies of the order-in-original and filed appeal before Commissioner (Appeals) on 06.01.2023 after making pre-deposit on 24.11.2022 and, therefore, the appeal filed before learned Commissioner (Appeals) was in time and, therefore, the order passed by learned Commissioner (Appeals) on appeal before him

was barred by limitation is not sustainable. He has further submitted that the appellant is a fruit seller and the show cause notice did not establish that the appellant was providing any service to anybody which was leviable to service tax. He has further submitted that sale is covered by negative list at entry (e) of Section 66D of Finance Act, 1994 and the activity of trading of goods is beyond the jurisdiction of levy of service tax.

3. Heard the learned AR for Revenue. He has reiterated the impugned order-in-appeal.

4. We have carefully gone through the record of the case, submissions made by learned counsel for the appellant during the hearing and copies of the affidavit and Aadhaar card submitted by learned counsel for the appellant. We note that the show cause notice did not establish that the appellant was providing any service. We also note that the show cause notice was sent to some address in Navi Mumbai whereas the appellant is conducting his business at Dombivli, Thane which is a place different than Vashi, Navi Mumbai and, therefore, we hold that the appellant neither received the show cause notice nor the order-in-original till such time the appellant made a request to provide the same somewhere in November 2022. The activity carried out by the appellant was sale of fruits which is covered by entry (e) under Section 66D of Finance Act, 1994 which deals with negative list. We, therefore, hold that during the relevant period, Department of Revenue did not have any jurisdiction to issue any show cause notice demanding service tax from the appellant.

5. We, therefore, set aside the impugned order and allow the appeal. Appellant shall be entitled for consequential relief in accordance with law.

(Order pronounced in the open court on 01.08.2024)

(Anil G. Shakkarwar)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

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