

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 3880-3881 OF 2018

M/S BHAVNA CONSTRUCTION CO. ... Appellant(s)

Versus

COMMISSIONER OF SERVICE TAX ... Respondent(s)

O R D E R

1. The Customs, Excise and Service Tax Appellate Tribunal (in short 'Tribunal') has vide its impugned order dated 5th January, 2017 accepted the revenue's claim that the benefit of Section 67(2) cannot be extended to the appellant as it failed to produce any supportive evidence to the effect that the gross amounts received for its services were inclusive of service tax and, hence, was susceptible to further deduction. A review petition against the order dated 5th January, 2017 was also dismissed vide order dated 22nd September, 2017.

2. It is worth mentioning that the Original Authority had confirmed the service tax liability on the appellant and it also imposed penalties under Sections 77 and 78 of the Finance Act, 1994. The appellant challenged the order of the Original Authority

and the Commissioner (Appeals) accepted its claim vide order dated 15th March 2011 and set aside the order of the Original Authority.

3. The Commissioner's (Appeals) order has been partly reversed by the Tribunal, as noted above.

4. We have heard learned counsels for the parties and perused the record.

5. The short question that falls for consideration is whether the appellant possesses requisite supporting evidence to establish that the considerations received by it were inclusive of service tax. Learned counsel for the appellant submits that sufficient documentary evidence fortifying its plea(s) was produced before the Commissioner (Appeals) as well as the Adjudicating authority and given an opportunity, the appellant is ready and willing to produce such evidence for Tribunal's consideration as well.

6. Learned counsel for the respondent-revenue could not oppose this reasonable offer made on behalf of the appellant.

7. In view of this, we allow these appeals in part and set aside the impugned order dated 5th January, 2017 of the Tribunal in so far as it pertains to question no. (c), and remit the case to the Tribunal for fresh adjudication of the said question, after taking into consideration the relevant material/documents as may be produced by the parties.

8. The parties are directed to appear before the Tribunal on 14th March, 2023.

9. It is clarified that we have not expressed any opinion on merits on question no. (c).

10. The appeals are partly allowed in view of the above.

11. Pending application(s), if any, shall stand disposed of.

.....J.
(SURYA KANT)

.....J.
(J.K. MAHESHWARI)

NEW DELHI;
24TH JANUARY, 2023.

ITEM NO.28

COURT NO.9

SECTION XVII-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 3880-3881/2018

M/S BHAVNA CONSTRUCTION CO.

Appellant(s)

VERSUS

COMMISSIONER OF SERVICE TAX

Respondent(s)

Date : 24-01-2023 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE J.K. MAHESHWARI

For Appellant(s) Mr. A.K. Prasad, Adv.
Mr. Rupesh Kumar, AOR
Ms. Pankhuri Shrivastava, Adv.
Ms. Neelam Sharma, Adv.
Ms. Surbhi Sinha, Adv.
Mr. Rajeev Sharma, Adv.

For Respondent(s) Mr. N. Venkatraman, A.S.G.
Mr. Mukesh Kumar Maroria, AOR
Ms. Vimla Sinha, Adv.
Mr. Shreeyash U Lalit, Adv.
Mr. Udai Khanna, Adv.
Ms. Preeti Rani, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The appeals are partly allowed in terms of the
signed order.

Pending application(s), if any, shall stand disposed
of.

(SONIA BHASIN)
COURT MASTER (SH)

(PREETHI T.C.)
COURT MASTER (NSH)

[Signed Order is placed on the file]