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

REGIONAL BENCH- COURT NO.3

Excise Appeal No.1167 of 2011

(Arising out of OIO-05/MP/DAMAN/2011 passed by Commissioner of Central Excise, Customs and Service Tax-DAMAN)

M/s. Msn Enterprise. ....**Appellant**
95, Hiran Magri, Sector 11,
Udaipur, Rajasthan

VERSUS

C.C.E & S.T.,-Daman ....**Respondent**
3rd Floor...Adarsh Dham Building, Vapi-Daman Road, Vapi
Opp.Vapi Town Police Station,
Vapi, Gujarat-396191

WITH

i. **Excise Appeal No. 1168 of 2011 (Ved Prakash Wadhwani)**
ii. **Excise Appeal No. 1170 of 2011 (Venkat R Chari)**
iii. **Excise Appeal No. 1171 of 2011 (Jignesh R Shah)**

APPEARANCE:
Sh. Prakash M. Dave, Advocate for the Appellant
Sh. K. Kinariwala, Authorised representative for the Respondent

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

Final Order No. A/ 11119-11122 /2019

DATE OF HEARING: 10.07.2019
DATE OF DECISION:10.07.2019

RAMESH NAIR

Shri. P.M. Dave, Ld. Counsel appearing on behalf of the appellant at the outset submits that the appellants did not file the defence reply and did not attend the personal hearing. He fairly submits that it is fault on the part of the appellant. He submits that after the adjudication order was passed, the appellant have under RTI made an application and got the voluminous documents which are very vital for making a defence reply, therefore, he prays for an opportunity to present the case before the adjudicating authority for de-novo adjudication. In support of this submission for remand of the matter, he placed reliance on the judgment of the Tribunal in the case Mohammed Hanif Haji Ismail Choksi Vs. Commissioner of C.Ex & S.T.-Surat-I, Final Order No. 10514-10515/2017 dated 20.01.2017.

2. Sh. K.J. Kinariwala, Ld. Assistant Commissioner (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.

3. We have considered the submission made by both the sides and perused the records. We find that the SCN was issued on 15th February 2007 and the adjudication order was passed on 30th March 2011, therefore, sufficient time was available to the appellant for making a reply to the SCN which the appellant failed to do so, therefore, it is clear negligence on the part of the appellant and with clear intention to delay the proceeding. The submission of the Ld. Counsel that now they have received voluminous documents under RTI, so they are in a position to file a reply, the appellant could have obtained this document even before the adjudication as sufficient time was available for the same. In this circumstances, and also considering the fact that the appellant have not represented the case before the adjudicating authority, in the interest of justice an opportunity can be given to the appellant for presenting their case before adjudicating authority but looking to the conduct of the appellants, in our view, a cost should be put.

4. Accordingly, the impugned order is set aside only related to the present appellants and matter is remanded to the adjudicating authority for passing afresh order subject to payment of cost of Rs. 50,000/- . Since, the matter is very old, and we direct the adjudicating authority to complete de-novo adjudication process within a period of 4 months from the date of this order. The appellant is also directed to co-operate in the proceeding. The payment of cost of Rs. 50,000/- to be made within 2 weeks and compliance to be reported on 05.08.2019.

(Dictated & Pronounced in the open court)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Prachi