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

REGIONAL BENCH- COURT NO. 3

Customs Appeal No. 14182 of 2013 - DB

(Arising out of OIO-SUR-EXCUS-001-COM-008-13-14 dated 20/09/2013 passed by Commissioner of Central Excise, Customs and Service Tax-SURAT-I)

Abubakar Ismail Kapadia **........Appellant**
C/O A.I.Kapadia (Sabriwala) 10/2486, Bhaga Talao,
Nr Pirbhai Shoes, Opp. Regal Shoes,
Surat, Gujarat

VERSUS

C.C.E. & S.T.-Surat-I **.......Respondent**
New Building...Opp. Gandhi Baug,
Chowk Bazar,
Surat, Gujarat - 395001

WITH

Excise Appeal No. 14183 of 2013 - DB

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New Building...Opp. Gandhi Baug,
Chowk Bazar,
Surat, Gujarat - 395001

APPEARANCE:
Shri Hasit Dave, Advocate for the Appellant
Shri Rajesh K Agarwal, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. C.L. MAHAR

Final Order No. A/ 12176 - 12177 /2023

DATE OF HEARING: 11.07.2023
DATE OF DECISION: 27.09.2023

RAMESH NAIR

Shri Hasit Dave, Learned Counsel appearing on behalf of the appellant at the outset submits that in this case despite the appellant have filed reply dated 28.05.2005 to show cause notice dated 04.05.2005, the Adjudicating Authority has not considered the same on the assumption that the appellant have not filed any reply in last 8 years, therefore, there is a gross violation of principle of natural justice. He request that the matter may be remanded to the Adjudicating Authority to reconsider the matter by considering the reply submitted by the appellant.

2. Shri Rajesh K Agarwal, Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.

3. We have carefully considered the submission made by both sides and perused the records. We find that the Adjudicating Authority in para 6 recorded as under:-

> *"The show cause notice was issued on 10.05.2005 and since then more than 8 years have passed they have not submitted their defence reply till date. I, therefore take up the matter for adjudication on the basis of record available."*

3.1 As per the above observation of the Adjudicating Authority, he decided the show cause notice as if no reply was filed by the appellant. However, as pointed out by the learned counsel, we find that there is a reply dated 28.05.2005 placed on record. Further, the acknowledgment stamp appears on the last page of the reply dated 25.07.2005 i.e. almost after two months from the date of reply, however, the said reply was not considered by the Adjudicating Authority. We are therefore of the view that the Adjudicating Authority should reconsider the whole case by taking the reply dated 28.05.2005 on record and considering the same. Needless to say that the appellant should be given the opportunity to make their submission, if required, before the Adjudicating Authority. The Adjudicating Authority is at liberty to verify the veracity of the reply said to have been submitted before him.

4. Accordingly, we set aside the impugned order and remand the matter to the Adjudicating Authority for passing a fresh de novo order after observance of principle of natural justice. Since the matter pertains

to the period 2002, the adjudicating authority shall pass the de novo order within a period of two months from the date of this order.

5. Appeals are allowed by way of remand to the Adjudicating Authority.

(Pronounced in the open court on27.09.2023)

RAMESH NAIR
MEMBER (JUDICIAL)

C.L. MAHAR
MEMBER (TECHNICAL)

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