CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH : AHMEDABAD

REGIONAL BENCH - COURT NO. 3

SERVICE TAX Appeal No. 00530 of 2011

[Arising out of Order-in-Original/Appeal No COMMR-A--223-VDR-I-2011 dated 01.06.2011 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-I]

State Bank Of India **.... Appellant**
Alkapuri Branch, Neha Apartment, R.C.Dutt Road,
Alkapuri, Vadodara, Gujarat - 390007

VERSUS

Commissioner of Central Excise & ST, Vadodara **.... Respondent**
1st Floor...Central Excise Building,
Race Course Circle, Vadodara, Gujarat - 390007

APPEARANCE :

Shri Sanjay Khemani, Chartered Accountant for the Appellant
Shri Dharmendra Kanjani, Superintendent (AR)for the Respondent

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

FINAL ORDER NO. A/12454 / 2021

DATE OF HEARING/ DECISION : 13.10.2021

RAMESH NAIR :

Shri Sanjay Khemani, learned Chartered Accountant appearing on behalf of the appellant submits that the impugned order was passed ex-parte though it appears that the hearing was given but they have not received the hearing notice at the given address for communication and appellant could not represent their case before the Commissioner. He takes us through various documents in respect of refund claim. He also relied upon the decision in the case of *State Bank of Bikaner & Jaipur vs. CCE, Jaipur – 2011 (24) STR 425 (Tri. Del.)*.

2. Shri Dharmendra Kanjani, Superintendent (Authorised Representative) appearing on behalf of the Revenue reiterates the findings of the impugned order.

3. On careful consideration of the submissions made by both sides, we find that the impugned order is an *ex-parte* order and the appellant could not file their defense due to miscommunication of hearing notices. Further, documents were also not provided to the Adjudicating Authority such as CA Certificate which was obtained subsequently. As regards the refund of profit on Foreign Exchange transactions, the same is covered by this Tribunal decision in the case of *State Bank of Bikaner & Jaipur vs. CCE, Jaipur (supra)*.

4. In view of the above position, we are of the view that the matter needs to be reconsidered on the basis of documents to be produced by the appellant as well as in the light of judgment in the case of *State Bank of Bikaner & Jaipur vs. CCE, Jaipur (supra).* Accordingly, we set-aside the impugned order and allow the appeal by way of remand to the Adjudicating Authority for passing a fresh order. Needless to say that appellant is given sufficient opportunity to represent their case as well as filing their submission along with documents. The de-novo adjudication order be passed not beyond three months period from the date of this order.

(Dictated and pronounced in the open court)

(Ramesh Nair)
Member (Judicial)

(Raju)
Member (Technical)

KL