REPORTABLE

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

REGIONAL BENCH- COURT NO. 3

Service Tax Miscellaneous Application (ROM) No. 11859 OF 2024
(filed by revenue)
in
Service Tax Appeal No. 10399 of 2015-DB

(Arising out of OIA-RJT-EXCUS-000-APP-234-14-15 dated 19.12.2014 passed by the Commissioner(Appeals) Central Excise, Customs and Service Tax-RAJKOT)

Dwarkesh Enterprise **........Appellant**
Bazar Line, Okha Port
OKHA,GUJARAT

VERSUS

Commissioner of C.E. & S.T.-Rajkot **........Respondent**
CENTRAL EXCISE BHAVAN,
RACE COURSE RING ROAD...INCOME TAX OFFICE,
RAJKOT,GUJARAT-360001

APPEARANCE:
Shri Nandesh Barai, Chartered Accountant appeared for the Appellant
Shri NeilPrakash G Makwana, Superintendent(AR) appeared for the Respondent

CORAM:
HON'BLE MEMBER (JUDICIAL), MR. SOMESH ARORA
HON'BLE MEMBER (TECHNICAL), MR. SATENDRA VIKRAM SINGH

Final Order No. 10253/2025

DATE OF HEARING/ DECISION: 04.04.2025

SOMESH ARORA

This is an application for recall of order by the department indicating that on the date when re-adjudication as per the remand order was to be done by the departmental authority, while serving notice, the fact came to the knowledge of the department that the proprietor of the appellant's proprietary concern had expired on 12.07.2016, but due to inadvertence, the Advocate for the appellant did not bring this fact to the notice of the Tribunal. He pointed out that even the department was not knowing this fact till the time re-adjudication was initiated by it. In view of the forgoing, it was his request that the order be recalled and the appeal be proceeded as abated as the same was not pressed by the legal heirs on 12.07.2016. The power of attorney issued in favour of the Advocate had also abated.

2. We appreciate the position stated by the learned A.R. Though Shri Nandesh Barai, Advocate tried to appear in the matter through power of attorney issued by his wife, the same was not supported by any probate or succession certificate of any competent Civil Court indicating that she was the sole heir. In view of the same, the appearance was not allowed by this Court. A properly executed power of attorney by all the legal heirs as per the letter of probate etc. has to be produced before this Court. We find substance in the position stated by the learned Authorised Representative and find that the matter deserves to be recalled. The Authorised Representative has no objection if after recalling, the same is taken as abated, which is also their prayer. In view of the stated position, the Final Order No.11926/2023 dated 12.09.2023 issued by this Court is recalled. In accordance with the view taken by various Courts in this regard as also reported in Shabina Abraham vs, Collector of Central Excise & Customs-2015 (322) ELT 372 (SC) on the point of abating of appeal. The same on having been recalled and restored, the appeal stands abated and is treated as such. However, if the legal heirs are interested, (despite the appeal having been abated and no recovery being possible as per law) to contest the personal penalty against the deceased to posthumously protect his dignity, the liberty is granted to them as per the law. The order is recalled and appeal is abated.

3. R.O.M. allowed. Appeal treated as abated.

(Dictated and pronounced in the open court)

(SOMESH ARORA)
MEMBER (JUDICIAL)

(SATENDRA VIKRAM SINGH)
MEMBER (TECHNICAL)

Bharvi