CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70418 of 2023

(Arising out of Order-In-Original No.50/PC/2022-23 dated 21.02.2023 passed by Commissioner, CGST & Central Excise, Lucknow)

Mohammad Asif Khan, S/o Sri Mohammad Qasim Khan
.....Appellant
(R/o-171/234, Idgah, District-Lakhimpur Kheri, U.P.)

VERSUS

Commissioner, CGST & Central Excise, Lucknow
....Respondent

(Ashok Marg, Lucknow-226001)

APPEARANCE:

Shri Sachin Srivastava, Advocate for the Appellant
Shri Santosh Kumar, Authorised Representative for the Respondent

CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO.70008/2024

DATE OF HEARING : 02.01.2024
DATE OF DECISION : 02.01.2024

P.K. CHOUDHARY:

The present appeal is arising out of Order-In-Original No.50/PC/2022-23 dated 21.02.2023 passed by Commissioner, CGST & Central Excise, Lucknow.

2. Heard both sides and perused the appeal records.

3. We find that the impugned Order-In-Original has been passed Ex-parte and the assessee never appeared before the learned Adjudicating Authority and accordingly the learned

Adjudicating Authority had no occasion to go through any of the documents relating to the assessee. He has observed as under:-

> *"4.1 I have carefully gone through the records of the case and the Show Cause Notice. Since the Party did not submit any defence reply whatsoever, despite the repeated requests made by the Department, their stand is not known.*
>
> *In compliance to the principles of natural justice, not one, not two but as many as five opportunities of personal hearing were provided to the Party, I.e., on 16-03-2022 & 24-03-2022 vide letter dated 09-03-2022, on 12-05-2022 vide letter dated 28-04-2022, on 09-01-2023 vide letter dated 28-12-2022 and on 10-02-2023 vide letter dated 02-02-2023. However, the Party chose to neglect these personal hearings altogether.*
>
> *As per law, a total of 3 adjournments i.e., a maximum of four personal hearings are required to be offered to a Noticee. In the present case, more than the adequate opportunities for personal hearings as per the law have been afforded to the Party, and that too spread over an eleven month long period. The fact that the Party chose to ignore these personal hearings altogether, clearly brings forth the fact that the Party are simply not interested in either filing a defence reply in this case or to attend the personal hearing. If they had any desire of filing defence reply / attending personal hearing, they would have done it on any of the multiple occasions offered to them over an eleven-month long period.*
>
> *I am convinced that they are not interested in either filing the defence reply nor are they interested in attending the personal hearing. It clearly reveals that they have nothing to say in the matter.*
>
> *However, just because the Party choses to act defiantly, does not mean that the process of adjudication can be kept in abeyance indefinitely. In compliance to the provisions of law, more than the required number of opportunities have been provided to the Party and therefore, they cannot complain tomorrow that natural justice was denied to them. Therefore, I am constrained to proceed ahead on the basis of the documents available on record."*

4. In the interest of justice, we set aside the impugned order and remand the matter to the learned Adjudicating Authority to grant an opportunity of hearing to the assessee and to submit the documents in support of their submissions. The learned

Adjudicating Authority is directed to complete the proceedings preferably within a period of 60 days from the date of receipt of this order. The appellant is directed not to seek unnecessary adjournment and co-operate in *denovo* proceedings.

5. The appeal is allowed by way of remand.

(Dictated and pronounced in open court)

(P.K. CHOUDHARY)
MEMBER (JUDICIAL)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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