CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Service Tax Miscellaneous (Early Hearing) Application No.70160 of 2024
(On behalf of appellant)
IN
Service Tax Appeal No.70237 of 2024

(Arising out of Order-in-Appeal No.NOI-EXCUS-002-APP-234-23-24 dated 01/09/2023 passed by Commissioner (Appeals) Central Goods & Services Tax, Noida)

M/s Shivam Fabtech Pvt. Ltd., ...Appellant
(22/9, South side of G.T. Road, Ghaziabad-201001)

VERSUS

Commissioner of Central Excise &

CGST, Noida ....Respondent

(4th Floor, C-232A/2 to 232A/3,

GST Bhawan, Sector-48, Noida-201305)

APPEARANCE:

Ms Rupali Singh, Advocate for the Appellant
Shri Sandeep Pandey, Authorised Representative for the Respondent

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

MISCELLANEOUS ORDER NO.70176/2024 IN
FINAL ORDER NO.70326/2024

DATE OF HEARING & DECISION : 21 May, 2024

SANJIV SRIVASTAVA:

The present Miscellaneous Application is filed by the appellant for out of turn hearing of the appeal.

1.2 In view of the submissions as made by the learned Counsel for the Appellant, prayer for out of turn hearing of the appeal is allowed. Early Hearing Application filed by the Appellant is allowed.

1.3 Further, with the consent of both the sides, we proceed to hear the appeal today itself.

1.4 This appeal has been filed against the impugned Order-in-Appeal No.NOI-EXCUS-002-APP-234-23-24 dated 01/09/2023 passed by Commissioner (Appeals) Central Goods & Services Tax, Noida. By the impugned order Commissioner (Appeals) has held as follows:-

> ***"ORDER***
>
> *Accordingly, the appeal No.184-ST/APPL-MRT/GZB/2022-23 dated 14.02.2023 filed by M/s Shivam Fabtech Pvt. Ltd., 22-9, South Side of G.T. Road, Ghaziabad, H.O. Ghaziabad U.P.-201001 is dismissed in above terms. The Order-in-Original No.132/DEPUTY COMMR./D-V/GZB/2022-23 dated 02.11.2022 passed by the Deputy Commissioner, Central GST, Division-V, Ghaziabad is upheld."*

2.1 A show cause notice dated 28.12.2020 was issued by the Division-VI, Ghaziabad and the said show cause notice was adjudicated vide Order-in-Original No.21/AC/STAX/CGST/D-VI/GZB/21-22 dated 29.11.2021 dropping the proceedings initiated by the show cause notice.

2.2 Subsequently, on the same grounds another show cause notice was issued by Division-V, Ghaziabad on 23rd March, 2021 which has been adjudicated by Order-in-Original dated 02.11.2022 confirming the demand made, which was already adjudicated and dismissed by the Original Adjudicating Authority, Division-VI, Ghaziabad.

2.3 Aggrieved appellant has filed appeal before Commissioner (Appeals), which has been dismissed by the Commissioner (Appeals) for the reason that the appeal has been filed beyond the condonable period by relying upon the decision of Hon'ble Supreme Court in the case of M/s Singh Enterprises holding that the appeal has been filed beyond the three days after the condonable period.

3.1 We have heard Ms Rupali Singh, Advocate for the appellant and Shri Sandeep Pandey Authorized Representative for the revenue.

3.2 Arguing for the appellant, learned Counsel submits that-

- The matter fall with the jurisdiction of Division-VI, Ghaziabad and the matter was rightly adjudicated by the concern Assistant Commissioner by dropping the proceedings.
- Proceedings subsequently initiated on the same grounds are without any jurisdiction, hence, the same is not exist in the eyes of law and such proceedings cannot be upheld for making any demand.
- The order was passed without considering the submissions made by the appellant, for which there is evidence to show that they were received by the Assistant Commissioner-V.
- As the order has been passed without any jurisdiction, the same do not exist in law and the order of Commissioner (Appeals) cannot be upheld for the same reason.

3.3 Learned Authorised Representative appearing for the respondent-revenue reiterates the findings recorded in the orders of the lower authorities.

4.1 We have considered the impugned orders along with the submissions made in appeal and during the course of argument.

4.2 In the table below, chronology of events leading to this appeal is indicated:-

28.12.2020	Show cause notice was issued for amount of Rs. 12,20,539/-on grounds of difference in STR & ITR for the period 2015-2016 by Division-VI Ghaziabad (Division in which the appellant falls) which was duly replied by the appellant on 10.02.2021.
23.03.2021	SCN was issued by Division V on the same grounds and for the same period by Division V Ghaziabad, which do not have any jurisdiction over the appellant.
29.11.2021	Show Cause Notice dated 28.12.2020 was adjudicated by the jurisdictional officer dropping the demand of Rs 12,20,539/-.
02.11.2022	Order-in-original was passed against the appellant by Division V on the ground that no reply was filed. However, the reply was duly filed on 10.02.2021. Annexure A2 has the stamp of the department showing receiving of the reply.

14.02.2023	Appellant filed an appeal against O-I-O of Division V. Due to technical glitch of the CBIC portal that appellant was unable to make the pre-deposit and hence there was a delay in filing the appeal. The same was duly informed to the Commissioner (Appeals). A copy of the application for condonation of delay is attached as Annexure A6 with the appeal.
01.09.2023	O-I-A was passed without considering the submission and on the ground that there is a delay of 3 days in filing the appeal and hence the present appeal

4.3 Undisputedly, the appellant falls within the jurisdiction of Division-VI, Ghaziabad and the proceedings initiated by the Division-VI, Ghaziabad by way of the show cause notice dated 28.12.2020, culminated into an order passed in favour of the appellant. In case, revenue was aggrieved by the same, they should have reviewed the order by filing appeal before Commissioner (Appeals).

4.4 Subsequently issued show cause notice dated 23.03.2021 issued by Division-V is without any jurisdiction and do not exists in the eyes of law for such reasons itself. When we find the initiation of proceedings by Division-V is without any jurisdiction of law, the proceedings culminated into the order by Commissioner (Appeals) is also not exists in law. The order of Commissioner (Appeals) disposing the appeal relying upon the decision of Hon'ble Supreme Court in the case of M/s Singh Enterprises cannot be upheld for this very reason that the original proceedings itself do not stand any ground in the eyes of law. Hence, all the proceedings initiated by the show cause notice dated 23rd March, 2020 which culminated into the impugned order by Commissioner (Appeals) are not exists and have got no merits in the eyes of law and never been in force. In case of Kitchen Essentials [2021-TIOL-2105-HC-MUM-CUS] Hon'ble Bombay High Court held as follows:

> *"15. …… The show-cause notice is totally non est in the eyes of law for absolute want of jurisdiction of the authority which issued it and therefore we have no hesitation in entertaining the present writ petition and passing appropriate orders thereon. Consequently, the order-in-appeal, the original order and the show-cause notice stand set aside."*

4.5 With the above observations, the appeal is disposed of. As we find the entire proceedings do not exists in the eyes of law, the amount pre-deposited by the appellant should be refunded to the appellant as per the extant provisions of law.

5.1 Appeal is disposed of.

(Dictated and pronounced in open court)

(P.K. CHOUDHARY)
MEMBER (JUDICIAL)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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