CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>ALLAHABAD</u>

REGIONAL BENCH - COURT No. I

Service Tax Appeal No.70670 of 2016

(Arising out of Order-in-Original No. 03/Principal Commissioner/ST/NOIDA/2015-16 dated 17/03/2016 passed by Commissioner of Customs, Central Excise & Service Tax, Noida)

M/s Shree Creations, **.....Appellant**

(82B, Pocket-A-3, Sector-71, Noida)

VERSUS

Commissioner of Customs, Central Excise &

CGST, Noida **....Respondent**

(Commissioner: Service Tax, Noida)

<u>APPEARANCE:</u>

Shri Atul Gupta, Advocate for the Appellant
Shri Manish Raj, Authorised Representative for the Respondent

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

FINAL ORDER NO.70416/2024

DATE OF HEARING : 01 July, 2024
DATE OF DECISION : 01 July, 2024

<u>SANJIV SRIVASTAVA:</u>

This appeal is directed against Order-in-Original No. 03/Principal Commissioner/ST/NOIDA/2015-16 dated 17/03/2016 passed by Commissioner of Customs, Central Excise & Service Tax, Noida. By the impugned order Commissioner has dismissed the appeal of the appellant by observing as follows:-

"ORDER

(i) I classify the service provided by M/s Shree Creations, 82-B. Pocket A-3. Sector-71, Noida to M/s Radnik Exports, E-2 Sector-59, Noida under Man Power Recruitment or

Supply Agency Services as defined under Section 65(105)(K) of the Finance Act, 1994.

(ii) I confirm the demand of service tax amounting to Rs. 3,91,57,093/- (Rs. Three Crores Ninety One Lakhs Fifty Seven Thousand One Hundred and Ninety Three only), not paid by M/s Shree Creations, 82-B. Pocket A-3, Sector-71. Noida, under Section 73(2) of the Finance Act, 1994 and order its recovery forthwith along with interest under the provisions of Section 75 of the Finance Act, 1994.

(iii) I impose a penalty of Rs. 3,91,57,093/- (Rs. Three Crores Ninety One Lakhs Fifty Seven Thousand One Hundred and Ninety Three only) upon M/s Shree Creations, 82-B. Pocket A-3, Sector-71, Noida under Section 78 of the Finance Act, 1994.

(iv) I also impose the penalty upon M/s Shree Creations, 82-B, Pocket A-3, Sector- 71 Noida at the rate of Rs. 200/- for every day during which failure to take registration Continues and till the date of compliance under the provisions of Section 77 (1) (a) of the Finance Act, 1994.

(v) I further impose a penalty of Rs10,000/- (Rs. Ten Thousand only) upon M/s Shree Creations, 82-B. Pocket A-3, Sector-71, Noida under the provisions of Section 77(1)(b) of the Finance Act, 1994 for not maintaining proper records."

2.1 We have heard the Shri Atul Gupta Learned Counsel appearing for the appellant and Shri Manish Raj Learned Authorised Representative appearing for the revenue.

2.2 Arguing for the appellant learned Counsel submits that

- the impugned order has been passed in the violation of principles of natural justice, as is evident from the fact that the hearing notices were not delivered to the appellant and the same were returned back
- the order has been passed in the violation of principles of natural justice and the matter needs to be remanded back

to the Original Adjudicating Authority for decision on merits after proper hearing to the appellant.

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

3.2 On internal page 34 of the impugned order, following has been recorded:-

"The opportunities of personal hearing were granted to the party to appear before the adjudicating authority on 02.06.2015, 17.06.2015 and 24.07.2015 by the then Commissioner. Service Tax Commissionerate, Noida but the party did not appear to defend their case. ***Further opportunities of personal hearing were also granted to the party to appear for personal hearing on 18.09.2015 and 14.01.2016 but both the letters were received back undelivered by the postal authorities."***

3.3 Taking the note of the above fact it is evident that the appellant never appeared before the Original Adjudicating Authority for personal hearing of the case on any occasion when the letters dated 18.09.2015 and 14.01.2016 were sent to them, received back undelivered by the postal authorities on account of address or for other reason, this fact is evident from the order.

3.4 Principles of natural justice which are well enshrined in the judicial processes provide, **"Audi Alteram Partem"** a Latin phrase that translates to "hear the other side." This fundamental principle of ensures fairness in judicial/ quasi judicial proceedings and administrative actions. In Administrative Law this is considered a cornerstone of the rule of law and is essential for upholding justice and preventing arbitrary decisions. In case of Shukla & Brothers [2010 (254) ELT 6 (SC)] Hon'ble Supreme Court observed as follows:

13. *The principle of natural justice has twin ingredients; firstly, the person who is likely to be adversely affected by the action of the authorities should be given notice to show* *cause thereof and granted an opportunity of hearing and secondly, the orders so passed by the authorities should give reason for arriving at any conclusion showing proper application of mind. Violation of either of them could in the given facts and circumstances of the case, vitiate the order itself. Such rule being applicable to the administrative authorities certainly requires that the judgment of the Court should meet with this requirement with higher degree of satisfaction. The order of an administrative authority may not provide reasons like a judgment but the order must be supported by the reasons of rationality. The distinction between passing of an order by an administrative or quasi-judicial authority has practically extinguished and both are required to pass reasoned orders. In the case of Siemens Engineering and Manufacturing Co. of India Ltd. v. Union of India and Anr. [AIR 1976 SC 1785], the Supreme Court held as under :-*

"6.......If courts of law are to be replaced by administrative authorities and tribunals, as indeed, in some kinds of cases, with the proliferation of Administrative Law, they may have to be so replaced, it is essential that administrative authorities and tribunals should accord fair and proper hearing to the persons sought to be affected by their orders and give sufficiently clear and explicit reasons in support of the orders made by them. Then alone administrative authorities and tribunals exercising quasi-judicial function will be able to justify their existence and carry credibility with the people by inspiring confidence in the adjudicatory process. The rule requiring reasons to be given in support of an order is, like the principle of audi alteram partem, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law. ..."

3.5 It is evident that the order has been passed in the violation of principles of natural justice though letters for personal hearing were issued but the same were not duly delivered to the appellant. In such a situation we are of the view that the impugned order needs to be set aside, matter needs to be remanded back to the Original Authority for decision on merits.

3.6 While remanding the matter, we direct the appellant that he should appear before the Original Adjudicating Authority on the dated fixed for personal hearing without seeking any adjournments.

4.1 Appeal is allowed and the matter is remanded back to the Original Adjudicating Authority for decision on merits.

4.2 Since the matter is quite old, Original Adjudicating Authority is directed to decide the matter within three months from the date of receipt of this order.

(Dictated and pronounced in open court)

(P.K. CHOUDHARY)
MEMBER (JUDICIAL)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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