CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL ALLAHABAD

REGIONAL BENCH - COURT No. I

Service Tax Appeal No.70117 of 2016-Division Bench

(Arising out of Order-in-Original No.11/COMM/GZB/2015-16 dated 17/08/2015 passed by Commissioner of Customs & Central Excise, Ghaziabad)

M/s Conarch Associates **.....Appellant**

(R-10/100, Raj Nagar, Ghaziabad, U.P.)

VERSUS

Commissioner of Customs, Central Excise

& Service Tax, Ghaziabad **....Respondent**

(Kamla Nehru Nagar, C.G.O. Complex, Ghaziabad)

APPEARANCE:

Absent on Call for the Appellant
Shri Pradeep Kumar Dubey, Authorised Representative for the Respondent

CORAM:

HON'BLE SMT. ARCHANA WADHWA, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO.- 71311 / 2019

Date of Hearing : 08 July, 2019
Date of Decision : 08 July, 2019

PER: ARCHANA WADHWA

On matter being called neither anybody appeared nor is there any adjournment request in spite of the notice of hearing having been sent well in advance to the appellant. It is also seen that on the last date of hearing i.e. 24/04/2019, when adjourning the matter to today, it was observed that the same is being adjourned by way of last chance and appeal would be decided on the basis of record.

2. Accordingly, we have heard learned A.R. appearing for the Revenue and have gone through the impugned order of Commissioner (Appeals) vide which he has confirmed service tax of Rs.1.27 crores approximately against the appellant and has imposed personal penalty of identical amount in terms of Section 78 of the Finance Act apart from confirming the interest and imposing penalty under Section 77.

3. On going through the impugned order, we find that Para-4 of the same is important which is being reproduced below:-

> *"4. From the records available in the file, it is observed that the above show cause notice was served on the party by way of pasting on the gate of the factory on 24/04/2014 and also a copy of the same was served on the same dated, i.e. 24/04/2014, upon Smt. Rashmi Goel, wife of Shri Shalabh Goel Propreitor/Partner of the said firm. Vide letter dated 21/05/2014, Shri Shalabh Goel, sought time of 30 days for submission of reply to the show cause notice on behalf of the party. However, they did not submit the reply even after lapse of 30 days from the date of the said letter. They were sent reminder vide letter dated 18/07/2014 for submission of their defence reply. This office received copy of three letters dated 06/08/2014 from the party, which were addressed to M/s Jagran Agents Pvt. Ltd., M/s Ircon International Ltd. & Ghaziabad Development Authority and copy endorsed to this office. As per these letters, the party requested all of them to pay service tax in respect of services rendered by the party. However, no reply was submitted. The party were given an opportunity to represent their case in person on 28/04/2015, vide this office letter dated 17/04/2015. The party, in response to the said PH (personal hearing) letter, requested vide their letter dated 27/04/2015 for an adjournment of personal hearing. Next date of personal hearing was afforded on 13/05/2015 vide this office letter dated 30/04/2015 but no one turned up for hearing. Personal hearing was again fixed on 16/07/2015 and 24/07/2015 vide this office letter dated 09/07/2015 but again no one turned up for personal hearing nor any communication was received from the party on the matter of personal hearing.*

> *The above facts make it clear that the party did not submit their reply to the show cause notice in spite of reminders and extending sufficient time. They did not turn up for personal hearing on any date while hearing was adjourned more than three times. As per proviso of Section 33A(2) of the Central Excise Act, 1944, adjournment of personal hearing in an adjudication proceeding can granted upto three times to a party. As the party did not incline to finalise adjudication proceedings and rather have tried to delay it to the prejudice of revenue, I have preferred to decide the case ex-parte on the basis of available records."*

4. On going through the said part of the order, we note that appellants were given number of opportunity to put forth their case. Either they sought adjournment or did not file reply also. Though from the above, we understand that the appellant was adopting avoiding tactics and may not be interested in contesting the matter but in the interest of justice, we would like to give another chance to the appellant. For the said purpose, we set aside the impugned order and remand the matter for fresh adjudication.

5. In view of our adverse observation made above, we give a period of two months from today to the appellant to file their reply and thereafter to attend personal hearing as fixed by the Commissioner. The appellant would not seek any unnecessary adjournment and in case of non-cooperation by the assessee, Adjudicating Authority would be free to go ahead to decide the matter on the basis of records.

6. Appeal is disposed of in above manner.

(Dictated and pronounced in open court)

Sd/-
(Archana Wadhwa)
Member (Judicial)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

Lks