**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL SOUTH ZONAL BENCH CHENNAI**

**Appeal Nos.ST/18/2007, ST/20-22/2007 ST/24/2007 & ST/27/2007**

[Arising out of Order-in-Appeal No.74/2006-TRY ST dt. 28.11.2006 passed by the Commissioner of Customs & Central Excise (Appeals), Tiruchirapalli]

1. S.R. Cabs
2. Raj Transports
3. P. Ramadas
4. Vinolia Tourist Cabs
5. R. Sundaramurthy
6. V. Ayyappan

Appellant

Versus

Commissioner of Central Excise, & ST Tiruchirapalli

Respondent

Appearance:

Shri S. Muthuvenkatraman, Advocate
For the Appellant

Shri K.P. Muralidharan, AC (AR)
For the Respondent

**CORAM :**

**Hon'ble Shri D.N. Panda, Judicial Member**
**Hon'ble Shri Madhu Mohan Damodhar, Technical Member**

Date of hearing / decision : 14.03.2017

**FINAL ORDER No.** 40496-40501/2017

**Per D.N. Panda**

Revenue has not produced adjudication order although that was ordered on 31.01.2017 for production today. More than 45 days have expired but there is no response.

Customs, Excise & Service Tax Appellate Tribunal

2. Ld. D.R. says that necessary communication has been made to ld. Commissioner (Appeals) at Trichy for sending the records to Tribunal and reply thereon is yet to be received.

3. Ld. Counsel says that these are the cases pertaining to Rent-a-Cab services intended to be taxed. Even though appellant submitted a copy of communication made to ONGC by department on 31.12.2001 for consideration of the issue of limitation for the years 2000-01 to 2005-06, that aspect was not dealt in the impugned order. If the appellant is given fair opportunity of hearing and reasoned order is passed on the basis of law settled, appellants may not have grievance and not deprived of the process of justice.

4. Revenue, on the other hand, contends that plea of limitation was neither raised before adjudicating authority nor appellate authority.

5. Heard both sides. Plea of limitation goes to the root of the matter. Relevant facts which germane to the issue are required to be brought to record for ultimate resolution of dispute both on question of facts and law. Therefore, Revenue's plea that issue of limitation was not raised before the authorities below does not get sanction of law since that dispute is alive before Tribunal.

6. Without dilating the matter further, we expect that if these appeals go back to ld. Adjudicating Authority, he shall threadbare examine all aspects of taxability including limitation issue granting fair opportunity of hearing to the appellant.

7. The authority granting full opportunity of hearing shall pass appropriate order recording pleadings, evidence and reason of his

Customs, Excise & Service Tax Appellate Tribunal decision. Since the matters are very old, it is expected that the authority within 6 months of receipt of this order shall pass appropriate order.

8. In the course of hearing, Ld. counsel says that appellant Shri P.Ramadas (Appeal ST/21/2007) has expired in the meantime as per the death certificate issued by the Registering Authority of municipal administration of Kumbakonam Municipality. In such event, appeal of P. Ramadas is abated. Accordingly, that is disposed in terms of Rule 22 of CESTAT (Procedure) Rules, 1982.

9. All five appeals are remanded to original authority with the direction above.

(Dictated and pronounced in open court)

17/03/17

(Madhu Mohan Damodhar)
Technical Member

16/3/2017

(D.N. Panda)
Judicial Member

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Customs, Excise & Service Tax Appellate Tribunal

प्रमाणित प्रति / Certified True Copy
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सहायक पंजीकार / Asst. Registrar
सीमाशुल्क उत्पादशुल्क एवं सेवा कर अपील अधिकरण / (CESTAT)
चेन्नै / Chennai