CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Service Tax Appeal No. 51739 of 2015

(Arising out of Order-in-Original No. JAI-EXCUS-001-COM-67-14-15 dated 30.12.2014 passed by the Commissioner, Central Excise Commissionerate, Jaipur)

M/s Y2K Engineers, **...... Appellant**
Monark Residency, D-227-A,
Shop No.2, Tulsi Marg,
Bani Park, Jaipur (Rajasthan)

VERSUS

The Commissioner, Central Excise Commissionerate, Jaipur **......Respondent**
NCRB, Statue Circle,
C-Scheme, Jaipur

APPEARANCE:
Shri Prashant Shukla with Ms. Asmita Nayak, Advocates for the Appellant
Shri Radhe Tallo, Authorized Representative of the Department

CORAM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. C.J.MATHEW, MEMBER (TECHNICAL)

Date of Hearing/ Decision: September 15, 2022

FINAL ORDER NO. 50911 / 2022

JUSTICE DILIP GUPTA

This appeal seeks the quashing of the order dated December 30, 2014 passed by the Commissioner, Central Excise, Jaipur, confirming the demand of service tax with interest and penalty.

2. It transpires from a perusal of the findings recorded by the Commissioner that no reply had been submitted by the appellant

to the show cause notice and even though the matter was fixed for personal hearing on September 10, 2014, October 16, 2014, November 21, 2014 and December 16, 2014, neither the assessee nor his representative appeared. The order also states that on December 16, 2014, an adjournment request was submitted by Madan Singh, for adjourning the matter but this request was not accepted by the Commissioner for the reason that Madan Singh had not filed Vakalatnama or Authorization. The matter was thereafter, taken up for decision on merit and the demand was confirmed.

3. Shri Prashant Shukla, learned counsel appearing for the appellant assisted by Ms. Asmita Nayak submitted that the learned counsel Madan Singh had only prayed for ten days time to file the reply to the show cause notice as some records and documents were required but this request was not accepted. Learned counsel also pointed out that with the adjournment letter preliminary submissions was also submitted.

4. Learned counsel submitted that in case the Commissioner was not inclined to grant adjournment, some time could have been granted to the learned counsel to file his Vakalatnama/ Authorization but even that was not done. Learned counsel has also pointed out that the preliminary submissions submitted by the appellant were also not examined by the Commissioner.

5. On merits, learned counsel submitted that though the appellant had executed a works contract, service tax at the full rate on the gross value of the contract was levied upon the

appellant only for the reason that the appellant had not submitted an option to pay service tax under the Composition Scheme.

6. Dr. Radhe Tallo, the learned authorized representative for the Department, submitted5 that the Commissioner committed no error in proceeding to decide the matter on merits because the appellant had not appeared before the Commissioner on three dates and even on the fourth date only an adjournment request was made on behalf of the learned counsel.

7. Having considered the submission advanced by the learned counsel for the appellant and the learned authorized representative for the Department, we are satisfied that this matter needs to be remitted to the Commissioner for taking a fresh decision. It is not in dispute that an adjournment request has been submitted by Shri Madan Singh, learned counsel but, this request was rejected only for the reason that learned counsel had not filed any Vakalatnama or Authorization. In such circumstances, at least one more opportunity should have been granted to the learned counsel to file the Vakalatnama. For this reason alone, we set aside the order dated December 30, 2014 passed by the Commissioner. As the matter is old, we would request the Commissioner to make an endeavor to decide the matter expeditiously and preferably within a period of three months from the date a copy of the order is produced by either of the parties before the Commissioner.

8. The appellant shall appear before the Commissioner on October 10, 2022 and shall file the reply to the show cause notice. The Commissisoner shall then fix a date for hearing and so that

the matter can be decided within the stipulated time. The appeal is allowed to the extent indicated above.

(JUSTICE DILIP GUPTA)
PRESIDENT

(C.J.MATHEW)
MEMBER (TECHNICAL)

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