

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.

Date of Hearing/Decision: 28.9.2018

Excise ROA No.50532/2018 & in
Appeal No.E/633/2011

[Arising out of Order-in-Appeal no.412(DKV)ST/JPR-I/2010 dated 24.11.2010
passed by the Commissioner of Customs & Central Excise (Appeals), Jaipur]

M/s.Indian Hotel Company Ltd. ...Appellant
Rep. by Shri Pradeep Jain, CA for the appellant

VERSUS

CCE, Jaipur. ...Respondent
Rep. by Shri H. C. Saini, DR for the respondent

CORAM : HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. BIJAY KUMAR, MEMBER (TECHNICAL)

Final Order No.53075/2018

PER ANIL CHOUDHARY :

Heard the parties on the ROA application filed by the applicant/assessee for recall of the Final Order No.58434/2017 dated 8.12.2017 –EX(DB) dismissing the Excise Appeal No. E/633/2011 for default on non-appearance by the appellant/assessee.

2. After hearing the parties and on perusal of the records, we find that against the impugned order No.412-DKV-CE-JPR-I-2010 dated 1.12.2010 passed by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Jaipur, the appellant had filed excise appeal in form EA-3 and the same was registered as Excise Appeal No.633/2011 by the Registry of this Tribunal. Subsequently, as it appears that the demand was with respect to service tax under the Finance Act, 1994, Central Excise Appeal filed by the appellant/assessee was re-registered as Service Tax Appeal No.ST/1866/2011-CU(DB).

3. Therefore, the ST Appeal of the assessee was disposed of by Single Member Bench of this Tribunal vide Final Order No.54121/2017 dated 27.01.2017 allowing the appeal by way of remand with directions.

4. However, it appears that due to some error, the original appeal No.E/633/2011 was not cancelled in the records of the Tribunal. Under the impression that the appeal records of E/633/2011 have gone missing, the appellant /assessee was given notice to file additional sets of appeal for re-creation of record and for disposal of the appeal. The appellant vide their letter dated 2.12.2017 intimated this Tribunal that there is some error in the records of the Tribunal, and no such appeal No.E/633/2011 is pending and their appeal stands disposed of. However, the said letter was not placed before the Bench and as per the direction of the Bench, to list similar such records missing cases before the Bench, the matter was listed on 8.12.2017 and the appeal was dismissed for default.

5. Appreciating the facts and circumstances of the case, we recall the Final Order No.58434/2017 dated 8.12.2017 in Appeal No.E/633/2011 as non-est. We further direct the Registry to close the Excise Appeal No.E/633/2011. We further declare that final order in appeal no.ST/1866 of 2011-CU(DB) shall be applicable and remain in force for all purposes. Accordingly, this misc. application is allowed. The appeal is disposed of as infructuous.

(Dictated & pronounced in the open court)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(BIJAY KUMAR)
MEMBER (TECHNICAL)

Ckp.