

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD
Division Bench
Court - I**

Appeal No. E/694/2009

(Arising out of Order-in-Original No. 2/2009 (PVR), Dt. 30.01.2009 passed by CCCE,
Visakhapatnam - II)

Deepak Shah

..... **Appellant(s)**

Vs.

CCCE & ST, Visakhapatnam - II

..... **Respondent(s)**

Appearance:

Shri C. R. Sridharan, Advocate for the Appellant.

Smt B.V. Siva Naga Kumari, Commissioner/AR for the Respondent.

Coram:

HON'BLE Mr. M.V.Ravindran, MEMBER (JUDICIAL)

HON'BLE Mr. P. Venkata Subba Rao, MEMBER (TECHNICAL)

Date of Hearing: 20.08.2018

Date of Decision: 20.08.2018

FINAL ORDER No. A/31091/2018

[Order per: M.V.Ravindran.]

1. This appeal is filed against the Order-in-Original No. 2/2009 (PVR) dated 30.01.2009.
2. Heard both sides and perused the records.
3. On perusal of records, it transpires that the issue involved in this appeal of Mr. Deepak Shah is regarding penalty imposed on him by the adjudicating authority. Learned Counsel brought to our notice that against the same Order-in-Original, assessee as well as another individual filed appeals before the Tribunal and the Tribunal by Final Order No. 253-255/2011 dated 05.04.2011, as reported at 2011-(272)-ELT-65, set aside

the Order-in-Original on the finding that the same is hit by limitation. He produces the copy of the said order. Learned Departmental Representative reiterates the findings of the lower authorities. On consideration of the submissions, we find that the same Order-in-Original was set aside by the Tribunal by the Bench by Final Order dated 05.04.2011 (as cited herein above) and dropped the demands raised along with interest and penalties imposed. Revenue's appeal was also disposed of by the said order. Since the very self same order has been set aside by the Bench, we find that the appeal filed by the appellant against penalty imposed under the said order needs to be allowed and we do so.

4. The appeal is allowed.

(Dictated and pronounced in the open Court)

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

(M.V. RAVINDRAN)
MEMBER (JUDICIAL)

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