CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD

Single Member Bench
Court - I

<table>
<tr><th>Application No.</th><th>Appeal No.</th><th>Appellant</th><th>Respondent</th><th>Impugned Order</th></tr>
<tr><td>ST/STAY/27032/2013</td><td>ST/26694/2013</td><td rowspan="2">SP Software Pvt Ltd</td><td rowspan="2">CCCE & ST, Hyderabad - II</td><td>OIO: 158-159/2012-ST dated 31.10.2012 passed by CCCE & ST, Hyderabad-II</td></tr>
<tr><td>--</td><td>ST/23050/2014</td><td>OIA: 41/2013 (H-II) ST dated 27.02.2013 passed by CCCE & ST, Hyderabad-II</td></tr>
</table>

Appearance
Shri Y. Sreenivasa Reddy, Advocate for the Appellant.
Shri A.V.L.N. Chary, Superintendent/AR for the Respondent.

Coram:
Hon'ble Mr. M.V. RAVINDRAN, MEMBER (JUDICIAL)

Date of Hearing: 11.10.2018
Date of Decision: 11.10.2018

FINAL ORDER No. A/31300-31301/2018

[Order per: M.V. Ravindran]

1. This Stay Petition No.ST/STAY/27032/2013 is filed against Order-in-Appeal No.41/2013 (H-II) S.Tax dated 27.02.2013.

2. After hearing both sides for some time on the stay petition, I find that the appeals themselves would be disposed. Accordingly, after allowing the application for pre-deposit of the amounts involved, I take up the appeals for disposal.

3. Heard both sides on the appeals and perused the records.

4. On perusal of records, it transpires that appellant was issued a show cause notice for demand of amount equivalent to 6% of the value of exempted services rendered by them during the period in both these appeals i.e., 2008-2011. It is the case of the appellant before the lower authorities that they have not rendered any exempted services. On confirmation of the demands raised by the adjudicating authority, appellant preferred an appeal and a stay petition before the first appellate authority. The first appellate authority while passing order on stay petition, recorded that hearing notices were sent to the appellant but they did not appeared. Hence, an exparte stay order was passed and since appellant had not complied with the stay order, he passed a final order dismissing the appeal for non-compliance.

5. Learned Counsel's main contention in these appeals is that first appellate authority should have granted hearing on the stay petition and also while dismissing the appeals for non-compliance. It is his submission that before the lower authorities he had filed vakalatnama and his vakalatnama was on record and he has not received any notice from the office of the Commissioner (Appeals).

6. Learned departmental representative submits that hearing notices were sent to the appellant.

7. On perusal of the records, I do find merits in the contentions raised by the learned Counsel. It is seen from the order in stay petition that the first appellate authority has only recorded that stay petition was listed for disposal but due to non-appearance and since stay petition needs to be disposed of in a definitive time frame, he disposed the same. In my view, subsequent dismissal of the appeal for non-compliance, at least should have

been after granting personal hearing to the appellant herein. There is violation of principles of natural justice, accordingly, the impugned orders as well as the order in stay petition are set aside and matter is remitted back to the first appellate authority to re-consider the issue afresh. The first appellate authority, in the changed scenario of Sec.35F having been amended, is requested to dispose of the appeal on merits after following principles of natural justice.

8. The impugned orders are set aside and the appeals are disposed of by way of remand.

(Dictated and pronounced in the Open Court)

(M.V. RAVINDRAN)
MEMBER (JUDICIAL)

Veda