IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
EAST REGIONAL BENCH : KOLKATA

Appeal No. ST/107/2011

Arising out of Order-in-Appeal No. 06/ST/Kol/2011 dated 11.01.2011 passed by the Commissioner of Central Excise & S. Tax (Appeal-I), Kolkata.

M/s Sukumar Yadav.

...APPELLANT(S)

VERSUS

Commissioner of Service Tax, Kolkata

....RESPONDENT (S)

APPEARANCE

Shri Tarun Chatterjee, C.S. for the Appellant (s)

Shri K. Choudhary, Suptd. (A.R.) for the Respondent (s)

CORAM:
SHRI P. K. CHOUDHARY, HON'BLE JUDICIAL MEMBER

Date of hearing/Decision:-09.02.2018

Order No.FO/A/75228/2018

Per Shri P. K. Choudhary :

Briefly stated the facts of the case are that by a Show Cause Notice dated 11.10.2007, M/s. Sukumar Yadav, a Proprietorship Firm was alleged that during the period from 01.04.2002 to 31.03.2007 the appellant Firm did not pay the Service Tax amounting to Rs.8,27,643/- on the services rendered as Handling and Transport Agent to their clients. The Proprietor of the appellant firm Sukumar Yadav died on 17.10.2005. The Adjudicating Authority confirmed the demand of Service Tax of Rs.8,27,643/- alongwith interest and imposed penalties. By the impugned Order, the Commissioner (Appeals) rejected the appeal filed by the appellant. Hence the appellant filed this appeal.

2. Heard both sides and perused the appeal records.

3. The Learned Counsel for the appellant argued the matter at length on merit as well as on limitation and the maintainability of the Show Cause Notice. The main contention of the Learned Counsel is that the Adjudication Order was passed without giving proper opportunity of hearing.

4. I find from the Adjudication Order that the Personal Hearing was granted on 30.12.2008 and 31.12.2008. It is recorded that none attended the hearing on behalf of the party. The Learned Counsel produced the copy of the hearing notice dated 19.12.2008 directing the appellant to appear on 30.12.2008 and 31.12.2008. It is contended that the said notice was received on the date of hearing itself. The Learned Counsel produced the postal envelope also. I find that the Adjudicating authority had given the personal hearing on 30.12.2008 and 31.12.2008 by one Hearing Notice dated 19.12.2008. He has not granted any Personal Hearing as provided under the law. I find force in the submission of the

Learned Counsel of the appellant. The Adjudication Order was passed without giving proper opportunity of personal hearing which is a gross violation of principles of natural justice. Hence, the impugned Order cannot be sustained.

5. In view of the above discussions, the impugned Order is set aside and the matter is remanded to the Adjudicating authority to decide afresh considering the submissions of the appellant and to pass Order in accordance with law. It is made clear that all the issues are left open. The appeal is allowed by way of remand to the Adjudicating authority.

Operative part of the order already pronounced in the open court.)

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

T.K.