IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, EASTERN ZONAL BENCH: KOLKATA

Ex.Appeal No.17/09

(Arising out of Order-in-Original No.CCE/Commr./Kol.I/Adjn./No.3/2008 dated 04.09.2008 passed by Commr. of Central Excise, Kolkata)

CCEx., Kol.I

Applicant (s)/Appellant (s)

Vs.

M/s Calcutta Furniture

Respondent (s)

Appearance:

Shri A. Roy, Supdt. (A.R.) for the Revenue
Shri A.Baheti, C.A. for the Respondent (s)

CORAM:

HON'BLE SHRI P.K.CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE SHRI V. PADMANABHAN, MEMBER (TECHNICAL)

Date of Hearing : 30.11.2018
Date of Decision : 30.11.2018

ORDER NO…FO/A/77024/2018

Per Bench :

The present appeal is filed against the Order-in-Original No.CCE/Commr./Kol.I/Adjn./No.3/2008 dated 04.09.2008.

2. This impugned order has been passed in the second round of litigation in compliance of the directions of the Tribunal vide Final Order No.A-724-725/Kol/2002 dated 25.06.2002. The respondent has a factory for manufacture of various furniture items. The dispute is regarding the liability of the respondent for payment of Central Excise duty. Keeping in view the direction issued by the Tribunal in the last

round of litigation, the adjudicating authority has re-decided the matter in the denovo proceeding, in which he dropped the significant part of demand made for Central Excise duty in the show-cause notice. However, he ordered for payment of Excise duty to the extent of Rs.2,82,166/- and imposed penalty of Rs.31,318/-. In the appeal filed by the Revenue, they have raised only two issues :

(i) The Adjudicating Authority did not verify the various conditions specified in the Notification No.1/93-CE dated 28.02.1993 while extending the benefit of SSI Exemption ;

(ii) The Adjudicating Authority has failed to impose penalty under Rule 173Q of the erstwhile Central Excise Rules, 1944.

3. The Revenue's case is argued by Shri A.Roy, ld.D.R. and the Respondent is represented by Shri A.Baheti, ld.C.A.

4. The ld.D.R. explained the grounds of Revenue's appeal.

5. On behalf of the Respondent, the ld.C.A. submitted that the appeal proceedings in this case are liable to be dismissed as abated in view of the fact that Shri Mukul Chatterjee, proprietor of the Respondent Unit has already passed away. He placed on record a copy of the Death Certificate of Shri Mukul Chatterjee registered with Bidhannagar Municipal Corporation, in which it is certified that the date of death is 04.08.2018.

6. Since the proprietor of the respondent's Unit has expired on 04.08.2018, the present appeal abates in terms of Rule 22 of CESTAT Procedure Rules, 1982. This view has also been taken by the Hon'ble Supreme Court in the case of Shabina Abraham Vs. Collector of Central Excise & Customs reported in 2017 (50) STR 241 (S.C.).

7. In view of the above, the appeal filed by the Revenue is dismissed as abated.

(Dictated and pronounced in the open court.)

Sd/	Sd/
(P.K.Choudhary)	**(V.Padmanabhan)**
Member (Judicial)	**Member (Technical)**

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