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

Appeal No. ST/88/2010

Arising out of Order-in-Appeal No. 95/ST/BBSR-I/2009 dated 16.12.2009 passed by the Commissioner (Appeals) of Central Excise, Customs & Service Tax, Bhubaneswar.

M/s Gananand Agarwal,

….Appellant (s)

Vs.

Commissioner of Central Excise, Customs & S. Tax, BBSR-I

…Respondent (s)

Appearance:
Withdrawal Application for the Appellant (s)
Shri S. Mukhopadhyay, Suptd. (AR) for the Respondent(s)

CORAM:
HON'BLE SHRI P. K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE SHRI BIJAY KUMAR, MEMBER (TECHNICAL)

Date of Hearing/Decision: - 18.07.2018

ORDER No…FO/A/77209/2018

Per Shri P. K. Choudhary:

When the matter was called, none appeared on behalf of the appellant. However, an application for withdrawal of appeal has been filed and place before the Bench, which states as under:-

> Sub: - Permission for withdrawal of Appeal.
>
> Sir,
>
> The above referred matter is fixed for hearing on 18.07.2018. In this connection it is humbly submitted that the said appeal was filed challenging Order-in-Appeal dated 28.07.2016 passed by Ld. Commissioner (Appeals) mainly on the ground that the Ld. Commissioner (Appeal) without

considering the contention of the Appellant that part of demand is covered by previous Show Cause Notices and part of the demand is already paid by them, remanded the matter to adjudicating authority for re-quantification of demand.

This Hon'ble CESTAT, vide Stay Order dated 02.04.2012, taking cognizance of the above facts held that since there is no quantification of duty and penalty amount and the matter is remanded to the adjudicating authority, stay petition is in fructuous and therefore, the same was rejected. Copy of the Stay Order dated 02.04.2012 is annexed hereto and marked as Annexure- "A".

In the meanwhile, the adjudicating authority complying with remand direction by Ld. Commissioner (Appeal) by Order-in-Appeal dated 28.07.2016 for re-quantification of demand, upheld the demand as it was once again. Against the said confirmation of demand the Appellant went into appeal before the Ld. Commissioner (Appeal) who in second round of litigation vide Order-in-Appeal dated 28.07.2016 reduced the demand to Rs.4,34,108/- alongwith interest and equivalent penalty under Section 78 of the Act. The Ld. Commissioner (Appeal) further appropriated the amount of Rs.2,00,900/- deposited by the Appellant against the said demand. Copy of Order-in-Appeal dated 28.07.2016 is annexed hereto and marked as Annexure- "B".

The Appellant has accepted that the said Order-in-Appeal dated 28.07.2016 passed by Ld. Commissioner (Appeal) and has deposited service tax, interest and penalty accordingly.

In view of the above facts it is humbly submitted that the appeal filed by the Appellant before this Hon'ble Tribunal has become infructuous and therefore, may be permitted to be withdrawn.

3. In view of the above submissions made by the appellant, the appeal is dismissed as withdrawn.

(Dictated and pronounced in the open court.)

(Bijay Kumar)
Member (Technical)

(P. K. Choudhary)
Member (Technical)

Tushar Kr.