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

S. Tax Appeal No. 75319 of 2015

Arising out of Order-in-Original No. CCE/BBSR-II/S. Tax/No.03/Commissioner/2014 dated 29.09.2014 passed by the Commissioner of Central Excise & Service Tax, Bhubaneswar-II.

M/s Banspani Iron Limited
At/Po.Bonaikea, Joda.
Dist-Keonjhar, Pin-758038
(Odisha)

….Appellant (s)

Vs.

Commissioner of Central Excise & S. Tax, BBSR-II
Commissionerate, Central Revenue Building,
Rajaswa Vihar, Bhubaneswar-751007.

….Respondent (s)

Appearance:
Shri Rajeev Avarwal, C. A. for the Appellant (s)
Shri A. K. Biswas, 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: - 08.08.2019

Order No……FO/A/76400/2019

PER SHRI P.K.CHOUDHARY:

This appeal is directed against the order passed by the Ld. Commissioner, Central Excise & Service Tax, Bhubaneswar, whereby demand of service tax has been confirmed alongwith with interest and penalty.

2. Before we go into the merits of the case, our specific attention has been drawn to the impugned order which bears no signature of the Ld. Commissioner. It is the submission of the Ld. CA. Sri Rajeev Agarwal appearing for the appellant that since the document is not signed, it cannot be construed to be a proper adjudication order. It has

been stated that a certified copy of the draft order has been provided by the Superintendent (Adjudication), Bhubaneswar, to the assessee for pursuing the appeal. For the purpose of signing the fair copy of the order, since the Ld. Commissioner was not available on the date of communication of the order due to his transfer, the changes suggested by the Ld. Commissioner in the draft order has been duly incorporated in the draft order and a copy thereof has been provided to the assessee.

3. It has also been stated that neither the draft order nor fair copy of the order contains date of passing of the order. Moreover, the draft order contains several handwritten corrections which are not legible, particularly para nos. 6.3.1 and 6.3.2 therein, and it is not possible to compare with the order copy communicated to the assessee. Further, the said draft copy only contains initial at the last page without date and proper signature. It is the contention of the Ld. CA for the appellant that the handwritten corrections made at various places should have been initialled at those respective places and the order should bear proper signature with date in the draft order.

4. Our attention has also been drawn to the decision of the Delhi High Court in M. S. Shoes East Ltd vs. UOI 2016 (338) ELT 668 (Del) wherein the Hon'ble Court, after noting that the draft order containing handwritten corrections was not even initialled, observed that the adjudicating authority who makes corrections to a draft order is statutorily obliged to ensure that he signs the final order and it is only thereafter, that any other officer can attest a copy of the said order to get a true copy of the original order. The Hon'ble Court also observed

that, it is only after the final order in original is signed by the adjudicating authority, a certified copy thereof could be issued to the party.

5. On perusal of both the draft and fair copies of the order communicated to the assessee, we are of the view that the impugned order is *non est* in the eyes of law. Since the assessee cannot be left remediless, justice would be met if the impugned order is set aside and the matter is sent back to the original authority for passing a fresh order following the due process of law. The Ld. Supdt. (AR) appearing for the Revenue has no objection if the matter is remanded back for de-novo adjudication. Accordingly, we set aside the impugned order and direct the Ld. Commissioner to pass a fresh order. It is needless to state that the assessee will be given adequate opportunity of being heard keeping in view of the principles of natural justice.

The appeal is disposed of in the above terms.

(Dictated and pronounced in the open court.)

Sd.
(P.K.Choudhary)
Member (Judicial)

Sd.
(Bijay Kumar)
Member Technical

T.K.