IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.1

Service Tax Appeal No.522 of 2012
(On behalf of Appellant)

(Arising out of Order-in-Appeal No.20/SH/CE(A)/GHY/12 dated 10.07.2012 passed by Commissioner (Appeals) of Customs & Central Excise, Guwahati)

Commissioner of CGST & Excise, Shillong
Morellow Compound, M.G.Road, Shillong-793001

Appellant

VERSUS

Shri P.J.Bhattacharjee
3rd Floor, Bijoyshree Complex, Silchar, (Cachar), Pin-788001

Respondent

APPERANCE :

Shri P.K.Ghosh, Authorized Representative for the Appellant
None for the Respondent

CORAM:
HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR.K.ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO…76304/2023

DATE OF HEARING : 01 .08.2023
DATE OF DECISION : 01 .08.2023

Per Ashok Jindal :

The Revenue is in appeal against the impugned order wherein an application for restoration of appeal before the Commissioner (Appeals) was allowed by the ld. Commissioner (Appeals) holding that as initially the appeal was dismissed for non-prosecution to hear the respondent, therefore, by modifying the said application, he allowed the same and ordered that the appeal be heard on merit. Against the said order, the Revenue is before us.

2. The facts of the case are that initially, as per the adjudication order, the demand of service tax was raised against the respondent. The said order was appealed by the respondent before the ld.

Commissioner (Appeals). The ld. Commissioner (Appeals) dismissed their appeal for non-prosecution. Thereafter, the respondent filed an application before the ld. Commissioner (Appeals) intimating him that their appeal was dismissed for non-prosecution. However, the respondent did not receive any notice of hearing at the address, which they have given to the Department vide letter dated 10.05.2010. In that circumstance, he prayed for recalling the order for dismissal of their appeal for non-prosecution.

3. The ld. Commissioner (Appeals) allowed the application and ordered that the appeal be decided on merits.

4. Against the said order, the Revenue is before us.

5. On going through the factual matrix of the case, it is the facts on record that the respondent intimated to the Department in their application in respect of their new address on 10.05.2010 and on the said address, no hearing notice was sent to the respondent. Therefore, the appeal was disposed off on the ground of non-prosecution and against the said order, the respondent made an application to the ld. Commissioner (Appeals). The said application was allowed.

6. As this fact is not in dispute that the respondent was not heard on merit by the ld. Commissioner (Appeals), in that circumstances, we hold that the respondent be given a fair opportunity of hearing.

7. In that circumstances, we set aside the impugned order dated 28.09.2012 holding the ld. Commissioner (Appeals) has no power to review its own order.

8. We also set aside the order dated 10.07.2012 where the appeal was dismissed for non-prosecution.

9. In that circumstances, we direct the ld. Commissioner (Appeals) to decide the appeal of the respondent on merit and pass an appropriate order in accordance with law.

10. The appeal is disposed of in the above terms.

(Dictated and pronounced in the open court)

Sd/-
(Ashok Jindal)
Member (Judicial)

Sd/-
(K.Anpazhakan)
Member (Technical)

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