CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH

Excise Appeal No. 87164 of 2013

(Arising out of Order-in-Original No. 05/Commissioner/Goa/Cx/2012-13 dated 25.02.2013 passed by the Commissioner of Central Excise, Customs & Service Tax, Goa)

M/s. Zenith Computers Ltd. **Appellant**
Plot No. 33/37, Sancoale Industrial Estate,
P.O. Zuari Nagar, Goa 403 726.

Vs.

Commissioner of Central Excise, Goa **Respondent**
Service Tax, ICE House, EDC Complex,
Patto Plaza, Panji, Goa 403 001.

Appearance:

None for the Appellant
Shri Sydney D'Silva, Additional Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)
HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

Date of Hearing: 04.03.2022
Date of Decision: 04.03.2022

FINAL ORDER NO. A/85234/2022

PER: SANJIV SRIVASTAVA

In this case, when the matter was called, the Registry pointed out that the Advocate on record has vide his letter dated 25th October 2021, informed as follows:-

"Sub: Permission for withdrawal of our Vakalatnama

Ref: Appeal No. E/87164/2013 against Order-in-Original No.05/Commissioner/Goa/Cx/2012-13 dated 25.02.2013

ZENITH COMPUTERS LTD. VS. CCE, GOA

We are the Advocates-on-record in the above matter.

However, we now understand that the case of Zenith Computers Ltd. has been referred to NCLT and Official Liquidator has been appointed by NCLT.

Under the circumstances, in the absence of any authorization to us from the Official Liquidator, we would like to withdraw our Vakalatnama in respect of the above appeal.

Accordingly, we pray the Hon'ble Tribunal for permitting us to withdraw the Vakalatnama."

2.1 Revenue has also informed that in respect of this appeal they have proceeded to file their claim before the Official Liquidator. Para 2 of the letter dated 12.01.2022 of the Deputy Commissioner, CGST, Division-IV, Margao, is reproduced below:-

"2. In this regard, it is informed that the claim for the OIO 05/Commissioner/Goa/CX/2012-13 dtd 30.11.2012 for the demand of Rs.7,05,28,940/- + Interest (to be calculated on the date of payment) after adjusting an amount of Rs.16 Lakhs deposited towards their interest liability against M/s. Zenith Computers Ltd., is filed with NCLT on 12.01.2022."

2.2 We find that this letter is of 25th October 2021 informing that NCLT has appointed Official Liquidator in the matter. We do not find that any application for substitution in terms of Rule 22 of the CESTAT (Procedure) Rules, 1982 has been filed by the Official Liquidator. Rule 22 of the CESTAT (Procedure) Rules, 1982 reads as follows:-

*"**Rule 22. Continuance of proceedings after death or adjudication as an insolvent of a party to the appeal or application.** — Where in any proceedings the appellant or applicant or a respondent dies or is adjudicated as an insolvent or in the case of a company, is being wound up, the appeal or application shall abate, unless an application is made for continuance of such proceedings by or against the successor-in-interest, the executor, administrator, receiver, liquidator or other legal representative of the appellant or applicant or respondent, as the case may be :*

Provided *that every such application shall be made within a period of sixty days of the occurrence of the event :*

Provided *further that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the period so specified, allow it to be presented within such further period as it may deem fit."*

A three judges bench of Hon'ble Supreme Court has in the case of Ghanashyam Mishra & Sons [2021 (9) SCC 657] considered similar issue and framed the following questions as per para 2 and gave their verdict in respect of these questions in para 95. These are reproduced below:

"2. The short but important questions, that arise for consideration in this batch of matters, are as under:-

(i) As to whether any creditor including the Central Government, State Government or any local authority is bound by the Resolution Plan once it is approved by an adjudicating authority under sub-section (1) of Section 31 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'I&B Code')?

(ii) As to whether the amendment to Section 31 by Section 7 of Act 26 of 2019 is clarificatory/declaratory or substantive in nature?

(iii) As to whether after approval of resolution plan by the Adjudicating Authority a creditor including the Central Government, State Government or any local authority is entitled to initiate any proceedings for recovery of any of the dues from the Corporate Debtor, which are not a part of the Resolution Plan approved by the adjudicating authority?

CONCLUSION

95. In the result, we answer the questions framed by us as under:

(i) That once a resolution plan is duly approved by the Adjudicating Authority under subsection (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority,

guarantors and other stakeholders. On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in 104 respect to a claim, which is not part of the resolution plan;

(ii) 2019 amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will be effective from the date on which I&B Code has come into effect;

(iii) Consequently all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority grants its approval under Section 31 could be continued."

3.1 As in this case, no successor intestate has caused any appearance either himself or through authorized representative, this Tribunal has no jurisdiction to entertain the present appeal. The same is accordingly abated in terms of Rule 22 of CESTAT (Procedure) Rules, 1982.

(Order pronounced in the open court)

(Sanjiv Srivastava)
Member (Technical)

(P. Dinesha)
Member (Judicial)

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