CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI
REGIONAL BENCH, COURT NO. 5

SERVICE TAX EARLY HEARING APPLICATION NO. 85143 OF 2024
IN
SERVICE TAX APPEAL NO. 85290 OF 2024

(Arising out of Order-In-Appeal No. SK/360/APPEALS-II/MC/2023-24 dated 31.10.2023 passed by Commissioner, CGST & CX, Appeals-II, Mumbai.)

SANDOZ P LTD
Plot No. 8A 2, TTC Industrial Area,
Kalwe Block, Dighe,
Navi Mumbai,
Mumbai Suburban-400 078.

........Appellant

Vs.

COMMISSIONER OF CGST AND CENTRAL EXCISE, MUMBAI CENTRAL
4th Floor,
Central Excise Building,
Churchgate,
Mumbai- 400 020.

.....Respondent

Appearance:
Shri Mohit Rawal, Advocate for the Appellant.

Shri S.B.P. Sinha, Superintendent, Authorized Representative for the Respondent.

CORAM:
HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)
HON'BLE MR. ANIL.G.SHAKKARWAR, MEMBER (TECHNICAL)

Date of Hearing: 26.04.2024
Date of Decision: 26.04.2024

FINAL ORDER NO :- 85454 /2024.

PER : BENCH

We have heard both sides on the early hearing application.

2. Learned Counsel for the Appellant submits that personal hearing was not granted to them despite their email request made on 14.01.2022 after the other side namely department failed to participate in the hearing through the link provided by them but no fresh date was given to them and ultimately the Order-In-Original came with a noting that personal hearing was granted on 18.01.2022 and none appeared. Appellant assailed the said order before the Commissioner (Appeals) and also took violations of principle of natural justice as one of the grounds in the said appeal but Commissioner

(Appeals) had rejected the same on the ground of limitation and on the ground that authorized signatory of the Appellant had not provided any formal authorization letter to appear on behalf of the Appellant, despite the fact that Order-In-Original was received by them on 13.04.2023 and the order allegedly sent to their previous address at Worli had never reached them.

3. Learned Authorized Representative for the Respondent department took note of the submissions. He is of the view that beyond 90 days, Commissioner (Appeals) has got no power to admit the appeal for hearing for which dismissal was rightly made.

4. We have perused the appeal record. It is noticed that Appellant had made all his correspondence with the Respondent department since issue of show cause notice from his present address at Navi Mumbai including the reply sent in response to the show cause. We have also noticed that Order-In-Original was sent to the previous address at Worli from where Appellant stated to have shifted its office way back in 2017. Email copy annexed to appeal memo at page no. 63 reveals that Appellant had participated in the hearing but no response came from the other side for which they requested for another date and it was apparently not given by the Respondent department.

5. We, therefore, are of the consider view that Appellant was deprived of the rights granted under the principle of natural justice of being heard in which event the matter is required to be re-adjudicated *de novo* by the adjudicating authority. Taking consent of both the sides, while allowing the early hearing application, we also consider it proper to allow the appeal by way of remand to the original adjudicating authority for a *de novo* hearing by providing opportunity to the appellant to be heard.

6. Accordingly, the early hearing application is allowed and so also the appeal by way of remand. Impugned order passed by the Commissioner (Appeals) vide Order No. SK/360/APPEALS-II/MC/2023-24 dated 31.10.2023 is set aside for the above reasons.

(Dictated and pronounced in open court.)

(Dr. SUVENDU KUMAR PATI)
MEMBER (JUDICIAL)

(ANIL.G.SHAKKARWAR)
MEMBER (TECHNICAL)

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