THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

C.E.A. No. 16 of 2017

JUDGMENT: (*per Hon'ble Sri Justice Sanjay Kumar*)

This appeal by the assessee under Section 35 (G) of the Central Excise Act, 1944, seeks to raise the following questions of law:

1. Whether in the facts and circumstances of the case the order of the Hon'ble Tribunal is violative of the principles of natural justice and hence liable to be set aside?
2. Whether in the facts and circumstances of the case the order of the Hon'ble Tribunal suffers from non application of mind and hence liable to be set aside?
3. Whether in the facts and circumstances of the case the order of the Hon'ble Tribunal is based on conjectures, surmises and pre conceived notions and hence liable to be set aside?
4. Whether in the facts and circumstances of the case the Hon'ble Tribunal erred in not considering the evidence and information made available by the Appellant and hence the order is liable to be set aside?

Ms. K. Mamta, learned counsel for the appellant-assessee, would contend that no opportunity of hearing was afforded to the appellant-assessee by the Customs, Excise and Service Tax Appellate Tribunal, Regional Bench at Hyderabad (for brevity, 'the Tribunal') prior to passing of the final order dated 17.08.2016 in Appeal No.E/2843/11.

As the Tribunal recorded in paragraph 7 of the order under appeal that the assessee was not represented, Sri B. Narasimha Sarma, learned senior standing counsel for the Revenue, was asked to verify as to whether the assessee had been put on notice.

Today, Sri B. Narasimha Sarma, learned senior standing counsel for the Revenue, produced a set of papers received from the Tribunal.

In the covering letter dated 06.07.2017, the Assistant Registrar of the Tribunal stated that hearing notices had been issued to the appellant-assessee well in advance except the last one which was issued just one day before the hearing. Perusal of the notices dated 01.12.2015, 27.01.2016 and 26.07.2016 appended to the covering letter reflects that there is a stamp in proof of the notice having been despatched but there is no evidence of the same having been served upon the appellant-assessee. That apart, as admitted by the Assistant Registrar of the Tribunal, the last notice dated 26.07.2016 was despatched on the same day seeking to inform the appellant-assessee that the hearing of the appeal was fixed on 27.07.2016, i.e., one day later.

Perusal of the order under appeal reflects that the date of actual hearing was 27.07.2016. In effect, the appellant-assessee was denied the opportunity to participate in the actual hearing on the said date by virtue of the notice having been despatched only one day earlier. Violation of the principles of natural justice is therefore demonstrable. On this short ground, the order under appeal is set aside and the matter is remitted to the file of the Tribunal for consideration afresh after giving due and proper opportunity to the appellant-assessee to participate in the hearing of the matter.

The C.E.A is allowed upon answering the first question of law in favour of the assessee. Pending Miscellaneous Petitions shall stand closed in the light of this final order. No order as to costs.

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JUSTICE SANJAY KUMAR

Date: 11.07.2017

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JUSTICE GUDISEVA SHYAM PRASAD

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