(2023) 09 CESTAT CK 0042

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 30217 Of 2023

GR Constructions APPELLANT

Vs

Commissioner Of Central Tax Secunderabad RESPONDENT

Date of Decision : 27-09-2023

Acts Referred:

Citation : (2023) 09 CESTAT CK 0042

Hon'ble Judges : A.K. Jyotishi, Member (T)

Bench : Single Bench

Advocate : R. Raghavendra Rao, M.A. Surya

Final Decision : Allowed

Judgement

A.K. Jyotishi, J

1. Learned Advocate for the Appellant submits that in terms of the Order of this Bench dated 28.07.2023, the Department was required to ascertain the factual position from the Office of the Commissioner (Appeals), as to whether there is any evidence to the effect that they were given opportunity for Personal Hearing or otherwise. This Bench, in the said Order has observed that the Appellate Authority had recorded in OIO that:

"Personal Hearing was held, wherein their authorized representative appeared on behalf of the appellant reiterated the submissions made in the appeal memorandum and pleaded for setting aside the impugned order in the light of the orders of the Honourable CESTAT in the case of M/s Vasantha Green Projects Vs CST, Ranga Reddy"

2. However, this was disputed by the Appellants and therefore, learned AR was asked to ascertain the factual position.

3. Learned AR has produced the copy of the letter dated 04.09.2023 from Commissioner (Appeals-II), Hyderabad. The Commissioner (Appeals) has, inter alia, informed that though the Appellants were given PH intimation on three

different occasions, the Appellants had not availed the above opportunities and has not turned up for PH. He also clarified that it was inadvertently mentioned that Appellant has appeared for PH and requested for setting aside the Order. Therefore, it is obvious that while a very categorical assertion was made in the OIA, the same is factually inaccurate. Learned Advocate for the Appellant also informs that with reference to the third intimation dated 14.09.2022, they had sought adjournment vide email to Commissioner (Appeals). However, they have not been able to produce any evidence to that effect.

4. In this case, the Revenue is also raising another preliminary objection with regard to payment of Pre-Deposit, as is required for filing Appeal and according to the Revenue, the Appellants have paid Rs.25,394/- vide DRC-03 Challan dated 23.02.2022, whereas, remaining Rs.8,500/- vide CIN dated 15.05.2022. It is his submission that payment made by DRC-03 cannot be taken as proper deposit for the purpose of filing Appeal before the Appellate Tribunal.

5. I have perused the records and I find that there was initially some observations regarding defect on account of non-payment of Pre-Deposit etc., but on receipt of clarification/Affidavit from the Appellants, the Registry has removed this defect, as being complied. Moreover, it is observed that in so far as the payment of Pre-Deposit through DRC-03 is concerned, the same has already been accepted by the Lower Authority and the Appeal has been already heard and decided. In so far as the remaining amount deposited in CESTAT is concerned, there is no dispute.

6. Heard both the sides and perused records.

7. Keeping in view the clarification received from the Commissioner (Appeals) and the fact that it was pointed out by the learned Advocate for the Appellant that they were deprived of opportunity of Personal Hearing and in the interest of justice, the matter is remanded back to the Commissioner (Appeals) keeping all the issues open and without expressing any opinion on the merits of the case.

8. Appeal is allowed by way of remand.

