

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
BANGALORE**

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 195 of 2009

[Arising out of Order-in-Original No. 23/2008-(Commr) dated 18.12.2008
passed by the Commissioner of Central Excise, Cus. & ST, Belgaum]

Tiffins Barytes

Asbestos And Paints Ltd,
D.No. 17/25, Dwaraka, First Cross Street,
Jaynagar Colony Cantonment,
Bellary, Karnataka

.....Appellant

VERSUS

Commissioner of CE & ST, Belgaum

No. 71, Club Road, Central Excise Building,
Belgaum, Karnataka - 590 001

.....Respondent

APPEARANCE:

Present for the Appellant: Sh. N. Anand, Advocate

Present for the Respondent: Sh. H. Jayathirtha, Authorized Representative

CORAM:

HON'BLE Dr. D. M. MISRA, MEMBER (JUDICIAL)

HON'BLE Mr. PULLELA NAGESWARA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 21230/2023

DATE OF HEARING: 22.08.2023

DATE OF DECISION: 09.11.2023

PER D. M. MISRA

This appeal is filed against Order-in-Original No. 23/2008-
(Commr) dated 18.12.2008 passed by the Commissioner of
Central Excise, Cus. & ST, Belgaum.

2. Briefly stated facts of the case are that the appellant is engaged in the business of winning of iron ore and red oxide minerals. The company exports its minerals to foreign buyers and also sells to domestic buyers. For the purpose of transportation of iron ore and red oxide minerals from the mines, they availed the services of Goods Transport Agency. The services provided by the transport companies was in relation to transportation of goods by road. The appellant was issued with the show cause notice for non-payment of service tax on receiving the said GTA service from various transport agencies during the period 2005-06 to 2006-07 amounting to Rs. 41,79,510/- and Rs. 44,59,411/- from 01.04.2006 to 31.03.2007. On adjudication, the demand was confirmed with interest and penalty. Hence, they preferred an appeal before this forum.

3. During the pendency of the appeal, one M/s Udhyaman Investments Private Limited filed an application for Corporate Insolvency Regulation Process (CIRP) under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with relevant Rules. The said application was admitted by the Honorable NCLT, Chennai Bench on 12th March, 2018 and CIRP was initiated. The insolvency process initiated against the appellant has attained finality vide order dated 12.06.2019 passed by the Honorable NCLT. On appeal, the said order dated 12.06.2019 has been upheld by the Hon'ble National Company Law Appellate Tribunal (NCLAT), Chennai Bench vide judgement dated 13.06.2023.

4. The Id. advocate for the appellant submitted that in view of the order of the Hon'ble NCLAT, Chennai, the appeal abates; the claim against the appellant gets extinguished in view of the judgements of the Hon'ble Supreme Court in the cases of ***Ghanashyam Mishra & Sons Pvt Ltd. Vs. Edelweiss Asset Reconstruction Company*** - (2021) 9 SCC (657) and ***CCE, Vadodara Vs. EMCO Ltd.*** - (2023) 8 Centax 163 (S.C.).

5. Per contra, the Id. A.R. for the Revenue submits that once the Resolution Plan is approved by the Hon'ble NCLT, the appeals stand abated as per Rule 22 of CESTAT (Procedure) Rules, 1982 and the Tribunal becomes *functus officio*. In support, he has relied on the following case-laws:-

- 1) *M/s MC Nally Sayaji Engineering Limited vs. CCGST, Bolpur*
- 2023 (4) TMI 1076 - CESTAT KOLKATA
- 2) *CCE & ST, Surat-II vs. Arcelormittal Nippon Steel India Ltd* -
2023 (2) TMI 231 - CESTAT AHMEDABAD
- 3) *M/s Jet Airways India Ltd vs. CST, Mumbai-V* - 2023 (5) TMI
767 - CESTAT MUMBAI
- 4) *M/s Bhushan Power & Steel Ltd vs. CCE, Kolkata-IV* - 2023
(5) TMI 184 - CESTAT KOLKATA
- 5) *M/s Alok Industries Ltd vs. CCE, Belapur & Mumbai* - 2022
(10) TMI 801 - CESTAT MUMBAI
- 6) *M/s Murli Industries Ltd vs. CCE, Nagpur* - 2022 (11) TMI
289 - CESTAT MUMBAI

6. Heard both sides and perused the records.
7. The issue involved in present appeal is: whether the appellant are entitled to continue with the Appeal and claim relief after Order of NCLT approving the resolution plan has been passed.
8. The present appeal is filed, being aggrieved by the Order of the Id. Commissioner, on various grounds, under Section 86 of the Finance Act, 1994.
9. During the pendency of the said Appeal, it is in not in dispute that pursuant to the petition filed by one M/s Udhyaman Investments Private Limited under Section 7 of IBC, 2016 read with Rule 4 of IBC (Application to Adjudication Authority) Rules, 2016 against the appellant, proceeding has been initiated. The Hon'ble NCLT vide Order dated 12th March, 2018 admitted the petition and appointed the Interim Resolution Professional (IRP) in the case. The proceedings were continued and culminated to passing the Resolution Plan which has been approved by the Hon'ble NCLT vide Order dated 12.6.2019 and on appeal, the said Order was upheld by Hon'ble NCLAT on 13.6.2023. Consequent to the said Order dated 13.06.2023, the appellant are now before this Forum.

10. The relevant provision under the CESTAT (Procedure) Rules, 1982 prescribed at Rule 22 reads as under:

"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."

11. The Mumbai bench of this Tribunal in the case of *M/s Alok Industries Ltd's case* (supra) analysed in detail Rule 22 of CESTAT (Procedure) Rules, 1982 and the case laws on the issue including those cited by the Ld. Advocate for the appellant observed that aforesaid Rule 22 should be applicable the moment the successor interest with sufficient rights is appointed by NCLT to make an application for continuation of the proceeding. It is observed as:

"4.4 -----

Learned advocate has labored to explain why this rule should not be made applicable in his case. However, in view of the fact as stated in the para 4.2 and 4.3 above we are of the view that moment the successor interest with sufficient

rights to be represented is appointed by the NCLT this rule will become applicable and it is for the successor interest to make an application for continuance of the proceedings. In the present case no such application has been filed by the successor interest for the continuance of the proceedings and hence the appeal stands abated by the operation of this rule.

4.5

4.6 *There is no dispute to the binding nature of the resolution plan as approved by the NCLT. It has been settled by the Hon'ble Apex Court in the cases referred to by the learned counsel for the applicant.*

4.7 -----

4.8 *However, from the date of approval of the resolution plan by the NCLT, the appeal filed by the applicant has abated and CESTAT has become functus officio in the matters relating to this appeal. Further it is also settled that the impugned orders in the appeals have got merged in the order of the NCLT approving the Resolution Plan. The decision of the Hon'ble Bombay High Court referred to by the learned Authorized representative clearly lays down the test as in which condition the said doctrine shall apply in following manner.*

4.9 *We are satisfied that the test laid down by the Hon'ble High Court is applicable in the present case for us to hold so. It is quite interesting to note that applicant to the extent of demand made finds the order of NCLT binding and wants pronouncement in respect of the refund by this tribunal. Can we sit in judgement over the order of NCLT approving the resolution plan? Further issue of refund is any case not the issue raised in appeal it is for the applicant to approach the relevant authorities in the matter.*

5.1 *The appeals filed abate as per the Rule 22 of the CESTAT Procedure Rules, 1982, with effect from the date of the approval of the resolution plan by the NCLT.*

5.2 *Since the appeals have abated the miscellaneous application filed by the applicant/appellant does not survive."*

12. Similar view has been expressed by other Benches of this Tribunal in the cases cited by the Id. A.R. for the Revenue i.e. (i) *M/s MC Nally Sayaji Engineering Limited vs. CCGST, Bolpur – 2023 (4) TMI 1076 – CESTAT KOLKATA; (ii) CCE & ST, Surat-II vs. Arcelormittal Nippon Steel India Ltd – 2023 (2) TMI 231 – CESTAT AHMEDABAD; (iii) M/s Jet Airways India Ltd vs. CST, Mumbai-V – 2023 (5) TMI 767 – CESTAT MUMBAI; (iv) M/s Bhushan Power & Steel Ltd vs. CCE, Kolkata-IV – 2023 (5) TMI 184 – CESTAT KOLKATA; (v) M/s Murli Industries Ltd vs. CCE, Nagpur – 2022 (11) TMI 289 – CESTAT MUMBAI.*

13. Needless to mention, as observed by the Hon'ble Supreme Court and High Courts in a catena of cases that the Tribunal is a creature of the statute; it cannot travel beyond the express powers vested under the Statute or Rules framed under the statute while deciding a statutory Appeal filed before it against the Orders of the prescribed statutory authorities mentioned under the statute. The corollary, any order passed by the Tribunal beyond the vested powers under the statute would be *non est* in law.

14. Thus, we are in complete agreement with the view consistently expressed by this Tribunal in a series of cases referred as above that the appeal abates once the IRP is appointed and/or Resolution plan approved. Consequently, the appeal abates as per Rule 22 of CESTAT (Procedure) Rules, 1982.

(Order pronounced in the court on 09/11/2023)

(D. M. MISRA)
MEMBER (JUDICIAL)

(PULLELA NAGESWARA RAO)
MEMBER (TECHNICAL)

RA_Saifi