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HIGH COURT OF CHHATTISGARH, BILASPUR

Tax Case No. 7 of 2015

Commissioner, Central Excise Customs & Service Tax, Bilaspur.

---- Appellant

Versus

M/s. South Eastern Coalfields Ltd. Seepat Road, Bilaspur, Chhattisgarh.

---- Respondent

For Appellant	:	Shri Maneesh Sharma, Advocate.
For Respondent	:	Shri R.K.Gupta, Advocate.

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri P. Sam Koshy, J.

Judgment on Board

Per Navin Sinha, Chief Justice

02/09/2015

1. Heard Learned Counsel for the Appellant and the Respondent. We are satisfied that the order of the Customs, Excise and Service Tax Appellate Tribunal, New Delhi (hereinafter called 'the Tribunal') dated 13.8.2014 in Service Tax Appeal No. 227 of 2008 is not sustainable in its present form and the matter has to be remanded to it for a fresh decision in accordance with law.

2. A show cause notice was issued on 16.11.2006 to the Respondent with regard to payment of service tax regarding Goods Transport Agreement entered into by it with transporters for transportation of coal from open pit head to the Railway siding. According to the Respondent, it sought clarification from the Central Board of Excise and Customs (hereinafter called 'the Board') regarding leviability of service tax. In the meantime, it *suo motu* stopped payment of service tax. The Commissioner, by order dated 20.2.2008 held the Respondent liable for payment of service tax with a direction to recover it with interest and penalty.

3. Learned Counsel for the Appellant submits that the order of the Commissioner is very detailed. It discussed threadbare contentions and counter-contentions to arrive at the conclusion that the clarification sought by the Respondent from the Board dated 12.11.2007 had also opined liability for payment of service tax. It was then paid for one year from the date of receipt of the show cause i.e. 9.12.2005 to 28.2.2013 through their 13 Area Offices. The Respondent had also advised its Area Offices to pay future service tax without protest. The Commissioner has held that the slips/challans/parchi issued by the Respondent transporters served more than the purpose of being a receipt of goods and fulfills all the requirements of a formal consignment note. That all the conditions required for issuance of consignment note existed in it and that it may have contained certain more details for convenience of the parties did not derogate from its nature of a consignment note. The transport companies by not issuing consignment notes violated provisions of Rule 4B of the Service Tax Rules. The Respondent had not followed the procedures laid down in the Acts and the Rules and failed to get itself registered with the department for payment of service tax which resulted in evading of service tax, thus guilty of suppression. The defence of having sought a clarification from the Board cannot be sufficient justification for avoidance of statutory liability and especially when the plea for clarification ultimately has been negatived. The plea of limitation was therefore not bonafide. The The Respondent by taking that defence essentially wanted to take advantage of their own lapses. All these aspects of the matter have not been considered by the Tribunal at all which has simply held that in absence of a consignment note actually not having been issued by the transporter, the liability for service tax was not attracted. The submission therefore is of complete non-application of mind by the Tribunal.

4. Learned Counsel for the Respondent, from the counter-affidavit supporting the order of the Tribunal only submits that if the consignment note was actually required before liability for service tax could arise and the Tribunal has arrived at a finding that in fact no consignment note had been issued, there is no error in the order of the Tribunal. Since there was no consignment note issued, there was no taxable service. The appeal does not spell out any reasons how the Tribunal has misinterpreted the provisions. The order of the Tribunal is reasoned. The mere fact that records were being maintained regarding quantum of work undertaken by the transporters would not *per se* serve purpose of consignment note as mandatorily required under the Customs and Excise Act.

5. We have considered the submissions of the parties.

6. The order of the Commissioner is well reasoned and discussed. It has analyzed the facts threadbare arriving at the conclusion that the mere seeking of a clarification from the Board cannot be sufficient justification to withhold payment of service tax. This aspect of the matter has not been considered by the Tribunal. The Commissioner further arrived at the finding that after the clarification by the Board, the Respondent has in fact paid the service tax, but partially only. The Commissioner further arrived at the finding that the plea for seeking clarification from the Board could not be a valid justification for the Respondent to take advantage of their own wrong by now invoking the plea of limitation. The Commissioner has further arrived at a finding of fact from the documents produced by the transporters and also submitted by the Respondent that the transport challans fulfilled all the requirements of the consignment note and that there may have been some additional information in it for the sake of convenience would not take the basic character of a consignment note fulfilled.

7. The Tribunal, without any discussion of these findings arrived at by the Commissioner, by a cryptic conclusion has held that in absence of any consignment note actually having been issued, no liability of service tax arises.

The question in the facts of the case is that once liability has been admitted by the Respondent, can technicalities justify non-compliance with the law when there is no substantive defence.

8. Suffice it to observe that any appellate order amenable to judicial review by a superior Court is required to be reasoned and considered, disclosing application of mind to the issues decided by the original authority, the grounds of appeal, the grounds taken in opposition to the appeal followed by a reasoning to arrive at its own independent conclusions especially when the order of the original authority is being set aside. Reasons have time and again been held to be the heart and soul of an order facilitating appreciation of the appellate order in judicial review. The order of the Tribunal in its present form affectively hinders judicial review and is also not sustainable for that reason.

9. The order of the Tribunal dated 13.8.2014 is set aside aside and the matter is remanded to the Tribunal for a fresh decision in accordance with law.

10. The Appellant and the Respondent shall both enter appearance before the Registrar of the Tribunal with a copy of the present order on 14th October, 2015 when the Registrar shall intimate to them appropriately further in the matter.

11. The Tax Appeal is allowed.

Sd/-

(Navin Sinha)
CHIEF JUSTICE

Sd/-

(P. Sam Koshy)
JUDGE

Subbu