IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINRY ORIGINAL CIVIL JURISDICTION

CENTRAL EXCISE APEAL NO.28 OF 2014

Abhijeet Trading Co. ...Petitioner.
vs.
The Commissioner of Central Excise, Pune III ...Respondent.

Mr. Makarnand Joshi with Mr.Anand Kulkarni for the Appellant.
Mr.S.D.Bhosale for the Respondent.

CORAM : S.C. DHARMADHIKARI
AND
S.P. DESHMUKH, JJ.
DATE : 09 MARCH, 2015

PC:

We have heard both sides and perused the order passed by the Tribunal on the application seeking waiver of the condition of pre deposit and stay of recovery. By an order dated 21 February 2013, the Tribunal has directed the appellant to deposit 50% of the service tax demand confirmed within a period of 8-weeks from the date of the communication of the Tribunal's order. On the appellant's failure to abide by the conditions, the appeal was to stand dismissed and the revenue then to recover the amount of duty demanded and confirmed.

2) We have heard both sides. We are informed by Mr. Joshi that appeal has been dismissed because of non compliance of the order by the appellant. He submits that there are series of orders and which are final orders passed by the Tribunal holding that the service rendered by the appellant to the parties like M/s. Kirloskar and M/s. Venky's India Limited would not fall within the definition of taxable service. It is not a supply of manpower service. The argument was that the composite services were rendered and which would not warrant classification as supply of manpower. In so far as supply of manpower service is concerned, the appellant has deposited the amount demanded. The other works are specified and would not therefore, fall under the category of supply of labour. He has handed over compilation of orders passed by the Tribunal in similar cases. Some of them according to him are final orders.

3) On the other hand, Mr. Bhosale appearing on behalf of the revenue supports the impugned order and submits that discretion has been exercised judiciously and the appeal does not raise any substantial question of law. It must be dismissed.

4) Having heard both sides, we are of the view that the

Tribunal's order does raise substantial questions of law. The appeal is therefore, admitted on the following questions of law.

a) Whether in the facts and circumstances of the case and in law, the Tribunal is justified in directing a pre deposit of 50% of the total demand of service tax confirmed and thereafter dismissing the appeal?

b) Whether in the facts and circumstances of the case and in law the Tribunal is justified in rejecting the stay application and thereafter dismissing the appeal when the issue on hand has been decided in favour of the assessee and against the revenue?

c) Whether in the facts and circumstances of the case and in law the Tribunal is justified in directing a pre deposit of 50% of the total demand of service tax confirmed and thereafter dismissing the appeal when the demand of service tax is beyond the normal period of limitation?

5) With the consent of both sides we are disposing of this appeal finally.

6) We have noted the rival contentions. We have also perused the definition of the term taxable service of supply of

manpower or labour. We have also perused the copy of the contract between the appellant and M/s. Venky's India Pvt. Ltd. We have found from the series of orders passed by the Tribunal that it has taken a particular view of the services which have been rendered by the parties like appellant. We have further noted that none of these orders passed by the Tribunal have been referred to nor considered in the impugned order. Mr. Joshi is right in pointing out that if services have been classified under particular category, then either some prima facie distinguishing features and factors should have been pointed out by the Tribunal or it should have rendered an independent conclusion on the basis of the facts as placed before the Tribunal. This exercise has not been undertaken at all. Even at the prima facie stage, if some distinction has to be made from the earlier decisions and orders then that distinction should have been briefly indicated. In the circumstances, we find that imposing of condition of 50% deposit of the demand confirmed in the order in original would amount to deviating from the earlier orders and without any distinguishing features noted in the Tribunal's order. The discretion should have been exercised reasonably and not arbitrarily. The Tribunal's order therefore, requires interference in our appellate jurisdiction. It would not be proper for us to indicate anything and with regard to the nature of the services which have been rendered by the appellant and the classification and the correctness of the view taken by the Tribunal as that would unnecessarily prejudice the case of both sides. We are of the view that in the given facts and circumstances the Tribunal should have imposed a condition of deposit of Rs.15 lacs (25% of the duty demand) and that would have been sufficiently balanced the rights and equities.

7) The impugned order is therefore, set aside and substituted with the above condition of deposit of Rs.15 lacs within a period of eight weeks from today. If this condition is complied with, the Tribunal shall restore the appeal to its file and hear the appellant and respondent on merits of the appeal and decide the same in accordance with law. All contentions of both sides are kept open.

(S.P. DESHMUKH, J.) (S.C. DHARMADHIKARI, J.)