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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CENTRAL EXCISE APPEAL No.4 of 2014.

Chrispal Shipping Co.Pvt Ltd .. }Appellant.

Vs

The Commissioner of Service
Tax, Mumbai-II & Anr .. }Respondents.

Mr Sameer G. Dalal i/by Ms Naveena Kumai for the Appellant.
Mr Vijay Kantharia, Senior Counsel i/by Ms Anamika Malhotra for the Respondents.

CORAM : S.C. DHARMADHIKARI &
S.P. DESHMUKH, JJ.
DATE : 12th JANUARY, 2015.

P.C.

1] This appeal challenges the order passed by the Central Excise and Service Tax Appellate Tribunal, Bench at Mumbai (hereinafter referred to as “the Tribunal”). By the order dated 8th March, 2013 the appeal preferred by the appellant/assessee together with the miscellaneous application has been dismissed.

2] Mr Dalal, learned counsel appearing on behalf of the appellant, would submit that the appeal raises the substantial questions of law, one of which was that the appellant specifically urged before the

Tribunal that the show cause notice could have been issued only by the Commissioner of Central Excise or any delegate of the Commissioner duly and properly delegated the powers to adjudicate in terms of the Finance Act, 1994 and the Central Excise Act,1944. However, in this case, the notice has been issued by the Superintendent of the Central Excise. He lacks jurisdiction and, therefore, the order passed by the Adjudicating Authority was void *ab initio*. This argument goes to the root of the case and should have been dealt with by the Tribunal.

3] Mr Dalal would, then, submit and in alternative that on merits the appellant had discharged and pointed out that he had discharged his obligation of remitting the service tax collected by the appellant from the clients. The argument or the allegation and to the contrary that extra amounts were collected from the clients for the payment of various charges has been accepted, according to Shri Dalal, without taking into consideration the position that these charges were incurred on reimbursable basis. Meaning thereby the customers incurred certain charges and expenses which were initially borne by the appellant. The amounts were then refunded or reimbursed to the appellant and on them no service tax can be levied, assessed and/or collected. This argument which was specifically raised and relying upon an order or decision of the co-ordinate Bench of the Tribunal in the case of **Bax Global India Ltd** reported in **2008 (9) STR 412**. However, the Tribunal despite the overwhelming evidence, in the form of bills and documents, ignored and brushed aside this argument. Thus, the concurrent findings are vitiated by clear perversity or an error of law apparent on the face of the record. Hence, the appeal be admitted, is the contention.

4] After perusing the order passed by the Tribunal and the relevant record, we are of the view that there is no merit in this appeal. The Tribunal has dealt with both contentions. It found that throughout the adjudication the appellant did not question the jurisdiction of the Adjudicating Authority and rather acquiesced in it. A miscellaneous Application was moved so as to raise additional grounds of jurisdiction and for the first time before the Tribunal. The Tribunal found that once this argument is based on certain factual aspects as well, though it allowed to raise it, proceeded to reject it by assigning the reasons, including of acquiescence. We do not find that the Tribunal was in error in rejecting such an argument and made belatedly. In the given facts and circumstances, when no supporting materials were produced to indicate as to how the Superintendent allegedly proceeded to issue the notice and adjudicate the departmental claim, the Tribunal rightly rejected the argument. The order was passed by the Adjudicating Authority and duly signed. That competence has not been questioned. The adjudication also, from the record, appears to have been before the authority competent to adjudicate the claim made by the Department and to consider the demand raised on the appellant/assessee. In such circumstances, whether the entire proceedings from the inception were under the authority of the Superintendent and he concluded the adjudication, was an argument raised for the first time before the Tribunal that the Tribunal found it fit to reject it by assigning reasons *inter alia* of acquiescence. We do not find that the Tribunal's order in relation to this aspect raises any substantial question of law.

5] Even on merits the Tribunal found that the appellant/assessee failed to prove the nature of the expenses stated to be reimbursable. The argument orally made that those were statutory levies which the clients or customers were obliged to pay but the assessee paid on their behalf has been rejected. The Tribunal has relied upon the fact that in the garb of collecting statutory levy on 35 occasions, the collection and of the amount by the assessee reflected a sum higher than the alleged statutory levy. Hence, neither the burden was borne for the clients who were obliged to pay any payment of statutory dues nor there was any record, much less proof, of reimbursable services rendered. In these circumstances, by a solitary entry in the books of account and that too of the assessee, the Tribunal could not have held that the service tax component did not include a sum and allegedly borne by the assesee for the client. Thus, the entire sum of service tax collected was not found to be remitted and at the percentage and in terms of the computation of the department, that the Tribunal dismissed the appeal.

6] The above would show that mere findings of fact have been rendered consistent with the materials placed on record. Such findings cannot be termed as perverse. They are also not vitiated by any error of law apparent on the face of the record. Resultantly, the appeal raises no substantial questions of law. It is dismissed. No order as to costs.

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