IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

STA-28-2014 (O&M)
Date of decision:- 08.04.2015

National Refrigeration & Air Conditioning Engg., Amritsar.

...Appellant

Versus

Customs, Excise & Service Tax Appellate Tribunal, New Delhi and another.

...Respondents

CORAM: HON'BLE MR. JUSTICE S.J. VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE G.S. SANDHAWALIA

Present: Mr. Sudhir Malhotra, Advocate, for the appellant.

Mr. D.D. Sharma, Advocate, for the respondents.

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S.J. VAZIFDAR, A.C.J. (ORAL)

This is an appeal against the order of the CESTAT dated 21.07.2014 directing a pre-deposit of about ₹ 33 lacs. The appellant contended that the Tribunal had not taken into consideration the fact that the service tax cannot be levied in respect of the work done in Jammu & Kashmir.

2. The appeal is admitted on the following substantial question of law:-

> *Whether in the facts and circumstances of the case and in law the Customs, Excise & Service Tax Appellate Tribunal, New Delhi, is justified in directing the appellant to make a pre-deposit of ₹33 lacs?*

3. In the impugned order, it is recorded that the point regarding services rendered in Jammu & Kashmir had not been taken up by the appellant before the adjudicating authority. This does not appear to be

correct. The adjudicating authority in the order itself expressly noted the appellant's contention that ₹ 2,50,03,060/- was received in respect of the work done in Jammu & Kashmir. It appears that the adjudicating authority did not accept this contention. Whether the contention is well founded or not is another matter altogether. However, the contention was taken. The impugned order, therefore, proceeded on the erroneous basis that the point had not been taken up by the appellant. For this reason, the order must be set aside as being unreasonable.

4. It is not possible, however, for us to state whether the appellant has made out a prima-facie case regarding the work allegedly having been done in Jammu & Kashmir. That is for the Tribunal to decide.

5. In these circumstances, the impugned order is set aside. The matter is remanded to the Tribunal for a fresh decision.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

(G.S. SANDHAWALIA)
JUDGE

08.04.2015
Amodh