IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.JAICHANDREN
AND
THE HONOURABLE MRS.JUSTICE S.VIMALA

C.M.A.No.2850 of 2015
and
M.P.No.1 of 2015

M/s.Empee Distilleries Ltd.,
Having Office at
No.59, Harris Road,
Pudupet,
Chennai - 600 002. ... Appellant/ Appellant

Vs.

Deputy Commissioner of Service Tax,
Service Tax Commissionerate
"MHU Complex", 692, Anna Salai,
Nandanam,
Chennai - 600 035. ... Respondent/ Respondent

Civil Miscellaneous Appeal filed under Section 35(G) of the Central Excise Act, against the order dated 21.09.2015 made in Final Order No.41233/2015 in Appeal No.ST/104/2005 on the file of the Customs, Excise and Service Tax Appellate Tribunal, Chennai.

For Appellant : Mr.K.V.Subramanian

For Respondent : Mr.V.Sundareswaran

JUDGMENT

(Judgment of the Court was delivered by S.Vimala, J.,)

The Appeal has been filed by the Assessee, challenging the final order No.41233/2015, dated 21.09.2015, passed in Appeal No.ST/104/2005 on the file of the Customs, Excise and Service Tax Appellate Tribunal, Chennai.

Brief facts:

2. A sum of Rs.9,33,280/- was demanded from the Assessee, through a show cause notice, in respect of goods transport service, received by the Assessee, during the period 16.11.1997 to 01.06.1998. The Assessee filed a detailed reply, raising legal issues and contending that the demand is not legally sustainable. The Commissioner, Central Excise (Appeals), rejected the Appeal. Aggrieved over the same, the Assessee filed an Appeal before the Customs, Excise and Service Tax Appellate Tribunal, which was dismissed, on 21.09.2015 and thereby, the order of the Commissioner, Central Excise (Appeals), came to be confirmed. Challenging the same, this Civil Miscellaneous Appeal has been filed by the Assessee.

3. It is the case of the Appellant/Assessee that the order passed by the CESTAT is liable to be set aside as it was passed without giving sufficient opportunity to the Assessee to put forth the legal contention. It is submitted that there are vital and critical legal issues, which require detailed scrutiny by the Tribunal and therefore, the Tribunal should have preferred to hear the Assessee on merits, instead of passing the order by hearing the Revenue alone.

3.1. It is submitted that on the date of hearing, the counsel was hospitalized and therefore, the written submission was sent through the clerk; the clerk, instead of filing the same before the Tribunal, had wrongly sent it by post and therefore, the Tribunal should have passed an order at least by taking into account the written submissions.

3.2. The copy of the written submission has been placed before this Court.

3.3. The learned counsel for the Assessee would also submit that there are other legal issues, with regard to the liability of the Assessee to pay service tax for the period from 16.11.1997 to 01.06.1998, in view of the following facts and circumstances:

(a) Service Tax on Goods Transport Operator Service was introduced with effect from 16.11.1997 vide Notification dated 41/97-ST dated 05.11.97. This service has been exempted with effect from 02.06.1998. During the intervening period, i.e. from 16.11.1997 to 01.06.1998, the user of the service has been made liable to discharge the service tax liability. As the Hon'ble Supreme Court struck down those provisions, the Government effected retrospective amendment relevant provisions of the Act.

(b) As per Section 68 of the Finance Act, 1994 (as amended), every person providing taxable service to any person is liable to pay service tax, but, in the case of Goods Transport Operator Service, every person, who receives the service has been made liable to pay the service tax vide retrospective amendment to this section effected through Finance Act 2003.

4. These submissions made clearly go to show that the Assessee has got an arguable case. The order passed by the CESTAT with regard to the non-appearance of the Assessee is cryptic and devoid of reasons. The reasons are the soul of the Judgment. The order passed without giving reasons cannot be sustained. The relevant portion of the order reads as under:

> "None appeared for the appellant although the matter was adjourned from time to time beginging from 02.12.2014."

5. The grievance of the Assessee is that the case was not listed for some hearings and on two hearings, the adjournment sought was granted and that on 21.09.2015, even though written argument was filed, the contentions raised in the written submissions were not taken into account, while passing the final order. However, the order has been passed on the date of hearing itself and it is not known whether written argument would have reached the CESTAT by that time. But, as the order passed by the CESTAT is devoid of details with regard to those contentions. Having regard to the questions of law raised in this case by the Assessee, this Court is of the view that sufficient opportunity of hearing ought to have been given to the appellant/assessee and it has not been given. Therefore, the order passed by the CESTAT, dated 21.09.2015, is liable to be set aside and it is set aside accordingly.

6. The learned counsel appearing for the Assessee assured before this Court that he would appear for the personal hearing before the CESTAT, on 15.02.2016. The Respondent is directed to give personal hearing either to the Assessee or to its counsel on 15.02.2016, or any other date to which the Respondent may choose to adjourn the case. The CESTAT is directed to hear the matter on merits and to pass orders in accordance with law, as expeditiously as possible.

7. In the result, this Civil Miscellaneous Appeal is allowed. No costs. Consequently, consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

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To

1. The Deputy Commissioner of Service Tax,
Service Tax Commissionerate
"MHU Complex", 692, Anna Salai,
Nandanam,
Chennai - 600 035.

2. The Registrar
Customs Excise and Service Tax
Appellate Tribunal
Chennai

1 cc to Mr.V. Sundareswarn, Advocate, Sr. 3873
1 cc to M/s.K.V. Subramanian, Associates, Sr. 4088

C.M.A.No.2850 of 2015

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