

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Service Tax Appeal No. 9 of 2013 (O&M)
Date of decision: 23.9.2016

General Manager Telecom District

.. Appellant

v.

The Customs Excise and Service Tax Appellate Tribunal and others
.. Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Anil Rathee, Advocate for the appellant.
Mr. Tajender K. Joshi, Advocate for the respondents.

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Rajesh Bindal J.

1. The assessee is in appeal against the order dated 25.10.2012, passed by Customs Excise & Service Tax Appellate Tribunal, Principal Bench, New Delhi (for short, 'the Tribunal') in Appeal No. ST/ROA No. 80/2012, ST/Appeal No. 124/2006, raising the following substantial questions of law:

- “(i) Whether respondent No. 1 was bound to restore the Appeal No. 124 of 2006 on its original number in view of the judgment of the Hon'ble Supreme Court in case Electronics Corporation of India Limited v. Union of India and others, (2001) 3 SCC 404 and hear the appeal on merit ?
- (ii) Whether the order dated 2.11.2006 passed by Committee on Disputes (COD) amounts to denial of promotion (sick permission) to file appeal ?

- (iii) Whether after passing of the judgment by Hon'ble Supreme Court in Electronics Corporation of India Limited v. Union of India and others (supra), order dated 2.11.2006 automatically extinguished ?
- (iv) Whether instructions dated 24.3.2011 issued by Government of India after passing of the judgment by Hon'ble Supreme Court about COD is contrary to the judgment of the Hon'ble Supreme Court of India ?
- (v) Whether the Central Excise Department has the power to claim service tax again from the appellant from April, 2002 to September, 2003 when it has already been deposited in the consolidated fund of India under the Head 0044 ?
- (vi) Whether the action of the respondents-Central Excise is without jurisdiction and amounts to malafide exercise of the administrative powers ?
- (vii) Whether depositing of service tax in the consolidated fund of India directly amounts to irregularity ?
- (viii) Whether the Central Excise has the authority to demand Service Tax afresh with penalty under Section 76 of the Act when the amount has already been accounted for in the Consolidated Fund of India ?
- (ix) Whether manifest injustice has been done to the appellant ?”

2. Learned counsel for the appellant submitted that vide Order-in-

Original dated 8.2.2006, passed by the Commissioner, Central Customs

Excise, Chandigarh, demand of service tax to the tune of ₹ 5,54,21,793/- was confirmed against the appellant. It is a case where the dispute is not regarding non-payment of tax. The amount of tax, in fact, had been deposited by the appellant, but it was deposited directly in the Government treasury and not in the bank designated by the department. The period in question is from October, 2002 to September, 2003. The Order-in-Original was challenged before the Tribunal. Vide order dated 30.10.2006, the Tribunal noticing the order passed by Hon'ble the Supreme Court in Oil and Natural Gas Commission v. Collector of Central Excise, 1992 (61) ELT 3 (SC), opined that as requisite permission from the Committee on Disputes had not been obtained, the parties were relegated to the Committee on Disputes with liberty to the appellant to get the appeal restored after clearance from the Committee on Disputes. The application filed by the appellant for restoration of the appeal after the decision was taken by the Committee on Disputes on 2.11.2006 was dismissed by the Tribunal on 12.3.2008 noticing that the Committee on Disputes had directed the parties to sit across the table and settle the matter, which was not the clearance or permission granted by the Committee on Disputes to permit the appellant to pursue the appeal before the Tribunal. Thereafter, though efforts were made by both the parties to settle the dispute, but with no positive result. Later on, considering the Constitution Bench judgment of Hon'ble the Supreme Court in Electronics Corporation of India Limited v. Union of India and others, (2001) 3 SCC 404, where it was opined that Committee on Disputes had out-lived its utility, the order passed in Oil and Natural Gas Commission's case (supra) was re-called. The appellant preferred fresh application before the Tribunal for restoration of the appeal, which was dismissed vide order

dated 25.10.2012 for the reason that earlier similar application had been dismissed and there being no permission granted by the Committee on Disputes. Reference was also made to the instructions dated 24.3.2011 issued by Central Board of Excise & Customs.

3. The submission is that the Committee on Disputes is no more functional. The dispute could not be settled between the parties in terms of the order passed by the Committee. In these circumstances, the appellant cannot be deprived of its right to be heard on merits in the appeal before the Tribunal. It is a case in which the amount of tax had already been paid. The only dispute is that the same was deposited in a wrong account.

4. On the other hand, learned counsel for the respondents, while referring to the circular dated 24.3.2011 issued by the Central Board of Excise & Customs, submitted that once the matter had been referred to the Committee on Disputes and that Committee having not granted permission, the application for restoration of the appeal was not maintainable. In the case in hand, the Committee on Disputes had directed the parties to sit across the table and settle the dispute, hence, the application for restoration was rightly dismissed.

5. Heard learned counsel for the parties and perused the paper book.

6. It is a case in which the appellant is being deprived of hearing of its appeal on merits only for the reason that initially the Tribunal, vide order dated 30.10.2006, had referred the matter to the Committee on Disputes in terms of the order passed by Hon'ble the Supreme Court in Oil and Natural Gas Commission's case (supra). It is not in dispute that the Committee on Disputes thereafter directed the parties to sit across the table

and resolve the dispute vide order dated 2.11.2006, but the dispute could not be resolved. The application filed by the appellant before the Tribunal for restoration of the appeal was dismissed on 12.3.2008. It was the stage, when the Committee on Disputes had passed the order directing the parties to sit across the table and resolve the dispute, but they had not made any efforts to resolve the same. Subsequently, as is not in dispute, the parties had made certain efforts to resolve the dispute, however, no final decision could be arrived at.

7. Hon'ble the Supreme Court in Electronics Corporation of India Limited's case (supra) opined that the Committee on Disputes, as constituted vide order passed in Oil and Natural Gas Commission's case (supra), had out-lived its utility and there was no need to resort to such mechanism. Thereafter, the appellant preferred application to the Tribunal for restoration of the appeal. The same was dismissed. In our opinion, the order passed by the Tribunal cannot be sustained. The appellant cannot be deprived of its right to pursue the legal remedy as per the provisions of law applicable. The view expressed by Hon'ble the Supreme Court in Oil and Natural Gas Commission's case (supra) was not to curtail the right of the parties, but was to shorten the litigation. The circular dated 24.3.2011, issued by Central Board of Excise & Customs, also cannot take away the statutory right of appeal.

8. Recently, the issue came up for consideration before Hon'ble the Supreme Court in M/s Northern Coalfield Ltd. v. Heavy Engineering Corp. Ltd. and another, 2016(6) SCALE 820. In the aforesaid judgment, office memorandum dated 12.6.2013 issued by the Government of India, Ministry of Industries and Public Enterprises, Department of Public

Enterprises revising the guidelines on the issue was referred to. The net effect thereof was summed up in para No. 22 of the judgment, which is extracted below:

- “22. The net effect of the above can be summarized as under:
- (i) The Permanent Machinery of Arbitration was put in place as early as in March, 1989, even before ONGC II was decided on 11th October, 1991.
 - (ii) The Permanent Machinery of Arbitration was outside the statutory provision then regulating arbitrations in this country namely Arbitration Act, 1940 (10 of 1940).
 - (iii) The award made in terms of the Permanent Machinery of Arbitration being outside the provisions of the Arbitration Act, 1940 would not constitute an award under the said legislation and would therefore neither be amenable to be set aside under the said statute nor be made a rule of the court to be enforceable as a decree lawfully passed against the judgment debtor.
 - (iv) The Committee on disputes set up under the orders of this Court in the series of orders passed in ONGC cases did not prevent filing of a suit or proceedings by one PSE/PSU against another or by one Government department against another. The only restriction was that even when such suit or proceedings was instituted the same shall not be proceeded with till such time the Committee on Disputes granted permission to the party approaching the Court.

- (v) The time limit fixed for obtaining such permission was also only directory and did not render the suit and/ or proceedings illegal if permission was not produced within the stipulated period.
- (vi) The Committee on Disputes was required to grant permission for instituting or pursuing the proceedings. If the High Power Committee (COD) was unable to resolve the dispute for reasons to be recorded by it, it was required to grant clearance for litigation.
- (vii) The Committee on Disputes experience was found to be unsatisfactory and the directives issued by the Court regarding its constitution and matters incidental thereto were recalled by the Constitution Bench of this Court thereby removing the impediment which was placed upon the Court's/Tribunal's powers to proceed with the suit/ legal proceedings. The Department of Public Enterprises has subsequent to the recall of the orders in the ONGC line of cases modified its guidelines deleting the requirements for a COD clearance for resorting to the Permanent Machinery of Arbitration and;
- (viii) The Permanent Machinery of Arbitration was and continues to be outside the purview of Arbitration Act, 1940 now replaced by Arbitration and Conciliation Act, 1996.”

order passed by Hon'ble the Supreme Court in Oil and Natural Gas Commission's case (supra), any proceedings could be initiated but could not be proceeded with till such time the Committee on Disputes granted permission. The permission from Committee on Disputes was not a mandatory requirement for institution of proceedings. The order passed by the High Court rejecting the plaint in the absence from Committee on Disputes was set aside. Committee on Disputes stands abrogated/dissolved and the orders directing constitution of such a Committee reversed. There is no question of either obtaining or insisting upon any clearance from the same.

10. At present, there is no Committee on Disputes in existence, which would take further view on the aspect that the matter already referred by it for settlement between the parties, in fact, could not be settled, hence, the appellant should be permitted to pursue the appeal. In these circumstances, the appellant cannot be left without any remedy. The order passed by the Tribunal dated 25.10.2012 declining to restore the appeal is set aside. The matter is remitted back for re-consideration thereof on merits. The parties are directed to appear before the Tribunal on 16.11.2016.

11. The appeal stands disposed of, accordingly.

(Rajesh Bindal)
Judge

(Darshan Singh)
Judge

23.9.2016
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No

