IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

STA No. 2 of 2016 (O&M)

Date of Decision: 11.4.2016

Commissioner of Service Tax Delhi-IV, Gurgaon

....Appellant.

Versus

Cocacola India Private Limited, Gurgaon

...Respondent.

1. Whether the Reporters of the local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MRS. JUSTICE RAJ RAHUL GARG.

PRESENT: Ms. Ranjana Shahi, Advocate with
Ms. Seema, Advocate for the appellant.

AJAY KUMAR MITTAL, J.

1. Delay of 59 days in refiling the appeal is condoned.

2. This appeal has been preferred by the revenue under Section 35G of the Central Excise Act, 1944 (in short, "the Act") read with Section 83 of the Finance Act, 1994 (for brevity "the 1994 Act") against the order dated 18.3.2015 (Annexure A-1) passed by the Customs Excise and Service Tax Appellate Tribunal, New Delhi (hereinafter referred to as "the Tribunal") claiming the following substantial questions of law:-

(i) Whether CESTAT is empowered to impose cost on the adjudicating authority?

(ii) Whether direction to deposit cost into the PM National Relief Fund is proper when it is not voluntary?

3. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The respondent was issued three show cause notices, first for the period 2005-06 to 2009-10 and the subsequent two notices for the periods 2010-11 and 2011-12 for demanding service tax amounting to ₹ 60,11,37,341/-, ₹ 47,24,64,597/- and ₹ 2,29,44,582/-, respectively. The adjudicating authority vide order dated 28.2.2013 confirmed the aforesaid demands of service tax along with interest and penalties. Feeling aggrieved by the order dated 28.2.2013, the respondent filed an appeal along with stay application before the Tribunal. The Tribunal vide order dated 18.3.2015 (Annexure P-1) allowed the appeal and imposed costs of ₹ 25,000/- on the adjudicating authority payable to the Prime Minister's National Relief Fund. Hence, the present appeal.

4. We have heard learned counsel for the appellant.

5. The Tribunal had recorded that the analysis of the adjudicating authority was nothing but verbatim reproduction of the submission of the appellant and no finding was recorded about the taxability of services and the analysis/discussions/findings of the adjudication are very shoddy. It had been highly and conspicuously non-speaking, non-reasoned, arbitrary and cavalier while passing the order dated 28.2.2013. The adjudicating authority had passed the order without application of mind and such orders adversely and severely impinge upon the public trust in the public authorities. It was further

recorded that a public authority is such circumstances while performing quasi-judicial function deserves to be put to costs. Accordingly, the Tribunal imposed the cost of ₹ 25,000/- on the adjudicating authority who passed the order in question. The relevant findings read thus:-

> "It is admittedly unusual to copiously and verbatim quote paragraphs from the adjudication order. However, it was felt necessary in the present case to do so to drive home the point that the adjudicating authority has been highly and conspicuously non-speaking, non-reasoned, arbitrary and cavalier while passing the impugned order. Non-application of mind (on the part of the adjudicating authority) is indeed writ bold and large across the impugned order. Such orders adversely and severely impinge upon the public's trust in the public authorities and for that reason a public authority displaying such egregiously irresponsible conduct and that too while performing quasi judicial functions deserves to be put to costs. Accordingly, we set aside the impugned order, allow the appeal and impose costs of ₹ 25,000/- on the adjudicating authority who passed the impugned order payable to the Prime Minister's National Relief Fund, within Four (4) weeks."

6. No illegality or perversity could be pointed out in the aforesaid findings recorded by the Tribunal which may warrant interference by this Court. Accordingly, no substantial question of law arises in this appeal.

7. In view of the above, there is no merit in the instant appeal and the same is hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

April 11, 2016 **(RAJ RAHUL GARG)**
gbs **JUDGE**