Sharayu.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CENTRAL EXCISE APPEAL NO. 138 OF 2015

The Commissioner of Service Tax Commissionrate, Pune ...**Appellant**

Versus

M/s. Akruti Projects ...**Respondent**

Mr. Swapnil Bangur, for the Appellant.

Mr. Bharat Raichandani, for the Respondent.

CORAM : ABHAY S. OKA AND RIYAZ I. CHAGLA, JJ.

DATE : 28 August 2017

ORDER :

1. Heard the learned Counsel appearing for the Appellant and the learned Counsel appearing for the Respondent. Questions of law have been framed in the order 8

August 2017, which read thus:-

(i)	Whether the Tribunal, under the facts and circumstances, was justified in holding that Notification No. 01/2006-ST is in confrontation with the charging section, Section 66 of the Finance Act, 1994?
(ii)	Whether the Tribunal was justified in allowing refund that charging section not applicable in the facts and circumstances of the case so far as the condition relating to not taking of CENVAT credit is concerned of the service tax paid by the sub-contractor?

2. The challenge in this Appeal is to the judgment and order dated 12 August 2014 passed by the Customs, Excise and Service Tax Appellate Tribunal (for short "***CESTAT***"), West Zonal, Bench at Mumbai. The said Appeal was preferred by the Appellant-Revenue for challenging the Order-in-Appeal dated 23 October 2008 passed by the Commissioner Central Excise (Appeals), Pune – III.

3. By an order dated 31 July 2008, the Deputy

Commissioner, Service Tax rejected the claim for refund of service tax amount made by the Respondent. By an order dated 23 October 2008, the Commissioner (Appeals), Central Excise allowed the Appeal preferred by the Respondent on the ground that the tax liability was correctly discharged by M/s. Devi Constructions Co.Pvt.Ltd. and therefore, the Respondent being a sub-contractor is entitled to refund. It is this order which was subjected to the Appeal before the CESTAT.

4. We have carefully perused the impugned judgment from paragraphs 1 to 4.4 on pages 2 to 15, the CESTAT has recorded only the submissions of the learned Counsel. In paragraph 5 of the impugned judgment, CESTAT has observed thus:-

> *"5. Having considered the rival contentions, I find that the Notification No. 1/2006-ST is in confrontation with the charging section, Section 66 of the Finance Act, 1994 and accordingly I hold the same*

> *is not applicable in the facts and circumstances of the case so far as the condition relating to not taking of CENVAT Credit is concerned of the service tax paid by the sub-contractor. Further, I notice that the finding of fact recorded by the adjudicating authority having not been challenged by any of the parties, and in view of the categorical finding of fact recorded, I hold that the respondent assessee is entitled to refund and accordingly, the appeal of the Revenue is dismissed."*

5. In paragraph 5.1, the Tribunal held that in view of what is held by the Apex Court in case of the ***Larsen & Toubro Ltd. Vs. State of Andhra Pradesh***[1], the opinion rendered by the third Member of the Tribunal in the case of ***Sunil Hi-tech Engineers Ltd. Vs. Commissioner of Central Excise, Nagpur***[2], is per *incuriam*. On plain reading of paragraphs 5 and 5.1, we find that there is no consideration of the detailed submissions made by the Appellate Revenue before CESTAT. In paragraphs 5 and

---

1 ***2006-TIOL-327-HC-HYD-VAT***

2 ***2014-TIOL-160-CESTAT-MUM***

5.1, only the conclusions have been recorded without recording any reasons.

6. The learned Counsel appearing for the Respondent tried to justify the ultimate order passed by the CESTAT by submitting what is held in paragraphs 5 and 5.1 is in the context of what is recorded in the earlier paragraphs.

7. As stated earlier, the impugned judgment upto paragraph 4.5 contains the facts and submissions. Paragraphs 5 and 5.1 do not contain any reasons. So as an Appellate Court, we do not have the benefit of the detailed reasons recorded by the CESTAT. We find that what is mentioned in paragraphs 5 and 5.1 cannot be even construed to mean that there is a general expression of agreement on the part of the CESTAT with the reasons recorded by the Commissioner.

8. Therefore, we are constrained to hold that the impugned judgment and order is perverse and hence, the same

deserves to be set aside. Accordingly, we pass the following order.

(i) Judgment and order dated 12 August 2014 is hereby quashed and set aside;

(ii) Appeal No. ST/36/09 is restored to the file of CESTAT, West Zonal Bench at Mumbai;

(iii) Parties to the Appeal shall appear before CESTAT, West Zonal Bench at Mumbai on 26 September 2017 at 11.00 a.m. for fixing the schedule of hearing;

(iv) Since the Appeal before CESTAT is of the year 2009, necessary priority be given by the said Tribunal to the disposal of this Appeal;

(v) We make it clear that no adjudication made by us on the merits of the controversy;

(vi) Appeal is partly allowed on the aforesaid terms;

(v) All concerned to act upon an authenticated copy of this order.

[RIYAZ I. CHAGLA J.] **[ABHAY S. OKA, J.]**