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

CENTRAL EXCISE APPEAL NO. 163 OF 2016

Shree Samarth Associates. ... Appellant.
V/s.
The Commissioner of Central Excise. ... Respondents.

Makarand Joshi i/b. Max Lega for the appellant.

Swapnil Bangur with Sham Walve for the respondent.

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

DATE : 12th September 2017.

P.C.:

By order dated 23rd August 2017, the parties were put to notice that this appeal will be taken up for final disposal at admission stage on the substantial question of law noted in the said order.

2. The appellant has taken an exception to the judgment and order dated 29th September 2015 rendered by the Customs, Excise and Service Tax Appellate Tribunal (for short "Appellate Tribunal"). The appeal preferred by the appellant before the Appellate Tribunal was directed against the order-in-appeal passed by the Commissioner of Central Excise (Appeals), Pune.

3. The appellant is engaged in providing temporary laborers to various service recipients. The registration of the appellant is under the category “Manpower Recruitment Agency Service”. A show-cause-notice cum demand notice was issued making a demand of Rs.36,15,934/- with interest. Even penalty was proposed. The adjudicating authority confirmed the demand and also imposed penalty. The first appellate authority reduced the liability as well as penalty. The tax liability was reduced from Rs.36,15,934/- to Rs.16,25,417 along with interest. Accordingly penalty under section 78 was reduced and penalty under section 77 was upheld.

4. The impugned judgment runs only in two pages. Paragraph-2 of the judgment merely records that both the sides are heard and record is perused. Paragraph- 3 contains narration of facts. The Appellate Tribunal has not at all noted the gist of submissions canvassed across the bar. Paragraphs- 4 and 5 are the only paragraphs which purport to be the findings of the Tribunal, which read thus:

> “4. On perusal of the records, we find that the appellant has accepted and admitted that they are liable to discharge the Service Tax liability and interest thereon. They were contenting before the first appellate authority only on the quantum cum tax benefit and also extended period cannot be invoked in some demands. We find that first appellate authority has addressed all the arguments raised by the appellant and reduced the tax liability, in accordance with the law. In our considered view, the appellant having admitted the tax liability and also that all the relief which were claimed before the first appellate authority were extended, has not made any case for setting aside penalties.

> 5. We find that the impugned order is a well reasoned order, considered the entire facts of the case in its correct perspective. We do not find any reason to interfere in such a reasoned order.”

5. Thus, the Appellate Tribunal has not even bothered to record the gist of submissions made before it. The findings recorded are cryptic. The Appellate Tribunal has not adverted to the findings recorded by the first appellate authority. The Appellate Tribunal observed that the impugned order was a well reasoned order and there was no reason to interfere with such a reasoned order.

6. On plain reading of paragraphs- 4 and 5, we are of the view that the Appellate Tribunal has failed to perform its duty. While dealing with this appeal, we do not have the benefit of the reasons recorded by the Appellate Tribunal. It is not possible for us to know as to what were the submissions made before the Appellate Tribunal.

7. Therefore, the impugned judgment and order will have to be quashed and set aside being perverse.

8. Hence, we pass the following order:

O R D E R

(i) The impugned judgment and order dated 29th September 2015 is hereby quashed and set aside and Appeal No.ST/393/11 is restored to the file of the Customs, Excise and Service Tax Appellate Tribunal, West Zonal Bench at Mumbai. The Appellate Tribunal shall decide the appeal afresh on its own merits in the light of the observations made in this order;

(ii) We are sure that considering the fact that the appeal is of year 2011, necessary priority will be given for disposal of the appeal by the Appellate Tribunal;

(iii) All contentions on merits are kept open.

(iv) The appeal is partly allowed on the above terms with no order as to costs.

(RIYAZ I. CHAGLA, J.) (A.S.OKA, J.)