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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CENTRAL EXCISE APPEAL NO.228 OF 2016**

Maruti Travel Agency	... Appellant
Vs.	
The Commissioner of Central Excise, Pune	... Respondent

Mr. Prakash Shah i/by PDS Legal for the Appellant.
Mr. Swapnil Bangur i/by Irene DSA for the Respondent.

**CORAM : A.S. OKA &
RIYAZ I. CHAGLA, JJ.**

DATE : 4th SEPTEMBER, 2017

ORAL JUDGMENT (Per A.S.Oka, J.)

1 Heard the learned counsel appearing for the appellant. The question involved in this Appeal is :-

“Whether the Customs, Excise and Service Tax Appellate Tribunal (for short “the Appellate Tribunal”) could have gone into the merits of the additional grounds sought to be incorporated in Appeal, while deciding the application made by the appellant under Rule 10 of the Customs, Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982 (for short “the said Rules”)?”

2 The Appeal is required to be heard on the aforesaid substantial question of law. Considering the narrow controversy involved in the Appeal, we have forthwith taken up the Appeal for final disposal. The present appellant preferred an Appeal before the Appellate Tribunal against the order dated 20th August, 2010 by which the demand for service tax and penalty was confirmed. An application was made by the appellant by invoking Rule 10 of the said Rules only for the purposes of adding grounds in the pending Appeal and permitting the appellant to canvass the said grounds at the time of final hearing of the Appeal. By the order impugned, the application has been rejected by the Tribunal.

3 The learned counsel appearing for the appellant has taken us through the impugned order. His submission is that the application invoking Rule 10 of the said Rules could not have been rejected in the facts of the case only on the ground that it was belatedly made. Secondly, his submission is that the Appellate Tribunal could not have gone into the merits of the grounds sought to be added in Appeal while deciding the application containing the limited prayer. The learned counsel appearing for the respondent supported the impugned order.

4 We have given careful consideration to the submissions. The Appeal before the Appellate Tribunal is required to be presented as provided in Rule 6 of the said Rules by submitting a Memorandum of Appeal and its accompaniments. Sub-Rule (1) of Rule 8 of the said Rules reads thus :-

“Rule 8. Contents of a memorandum of appeal:

- (1) Every Memorandum of Appeal shall set forth concisely and under distinct heads, the grounds of appeals and such grounds shall be numbered consecutively and shall be typed in double space of the paper.”

5 In the present case, we are concerned with Rule 10 which reads thus :-

“Rule 10. Grounds which may be taken in appeal:

The appellant shall not, except by leave of the Tribunal, urge or be heard in support of any grounds not set forth in the memorandum of appeal, but the Tribunal, in deciding the appeal, shall not be confined to the grounds set forth in the memorandum of appeal or those taken by leave of the Tribunal under these rules:

Provided that the Tribunal shall not rest its decision on any other grounds unless the party who may be affected thereby has had a sufficient opportunity of being heard on that ground.”

6 On conjoint reading of Sub-Rule (1) of Rule 8 and Rule 10, it is apparent that hearing before the Appellate Tribunal need not be confined to the grounds of Appeal set forth in the Memorandum of Appeal filed in accordance with Rule 8. Only embargo on the power of

the Tribunal in considering the grounds which are not raised in the Memorandum of Appeal is that the parties to the Appeal should be put to notice that a particular ground which is not specifically set out in the Memorandum of Appeal will be considered by the Appellate Tribunal on merits. Perusal of the prayer made by the appellant in the Miscellaneous Petition shows that it was a limited prayer for permitting the appellant to urge the additional grounds set out in the said application. The said application was essentially made to ensure that the respondent is put to notice that additional grounds would be urged at the time of final hearing of the Appeal. That is the principle laid down in the proviso to Rule 10 in the said Rules. The occasion for filing the said application arose as the Appeal preferred by the appellant was fixed for hearing.

7 According to us, the view taken in the impugned order by the Appellate Tribunal that the application was belatedly filed after 5 years is erroneous. In a given case, even after commencement of the hearing before the Appellate Tribunal, the appellant is entitled to contend that a ground which is not taken in the Memorandum of Appeal should be considered by the Appellate Tribunal. In such a case, if the Appellate Tribunal wants to consider the ground, adequate opportunity will have to be granted to the contesting respondents in the light of the proviso to Rule 10. While deciding the application, the

Appellate Tribunal appears to have gone into the merits of the additional grounds sought to be agitated on the merits of the Appeal. Normally an application seeking a leave under Rule 10 should be allowed unless the application is malafide or amounts to abuse of process of law.

8 The issue whether the additional grounds sought to be urged had any merit could not have been gone into while deciding the application made containing limited prayer as aforesaid. The issue to be decided while considering the said application was whether the appellant should be allowed to urge additional grounds set out in the application at the time of final hearing of the Appeal. The merits of the additional grounds could have been considered at the time of final hearing. Hence, even the order passed on the said application will have to be set aside and the said application will have to be allowed. As the grounds mentioned in the said application will have to be considered in the Appeal, the same will have to be restored and released.

9 Accordingly, Appeal must succeed and we pass the following order :-

ORDER

- (i) The impugned order dated 13th October, 2015 is hereby quashed and set aside and Application No.ST/MA/

(Ors.)-93441/2015 is allowed in terms of prayer clause

(a) thereof;

(ii) We make it clear that we have made no adjudication on merits of the additional grounds incorporated in the said application and all contentions of parties in that behalf are expressly kept open;

(iii) We make it clear that Appeal No.ST/653/2010 is also restored to the file of the Appellate Tribunal as a result of setting aside the impugned judgment and order which shall be heard afresh by the Tribunal in accordance with law.

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

(RIYAZ I. CHAGLA, J)

(A.S. OKA, J)