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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

STA No.1 of 2017 (O&M)
DATE OF DECISION:06.04.2017

COMMISSIONER SERVICE TAX, DELHI-IV … Appellant

Versus

RITES LTD., GURGAON ... Respondent

CORAM: HON'BLE MR. JUSTICE S.J. VAZIFDAR, CHIEF JUSTICE
HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present: Mr. Sourabh Goel, Advocate for the appellant.

Mr. Udit Seth, Advocate for the respondent.

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S.J. VAZIFDAR, C.J. (ORAL)

This is an appeal against the order of the Customs, Excise & Services Tax Appellate Tribunal (for short 'the Tribunal') dated 29.10.2005 (Annexure A-6), setting aside the order of the Appellate Authority, rejecting the petitioner's claim for refund.

2. According to the appellant, following substantial questions of law arise:-

i) Whether the action of adjudicating authority in following the procedure established by law with regard to disbursal of refund amount from govt. exchequer is proper and in accordance with law?

ii) Whether the impugned order dated 29.10.2015, is perverse, illegal and untenable in the eyes of law and the same is therefore liable to be set aside?

iii) Whether the Ld. Tribunal committed an error in ignoring that the application for refund filed by the respondent/assessee was in fact barred by limitation *and therefore the order dated 16.11.2001, Annexure A-2, was nullity in eyes of law?*

iv) Whether the adjudicating authority was not empowered to consider that the refund claim application was barred by limitation?

v) Whether CESTAT is empowered to impose cost on the adjudicating authority?"

3. The first four questions do not raise substantial questions of law. The Assessing Authority had rejected the respondent's/assessee's application for refund. The petitioner's appeal against the same was allowed by the order of the Appellate Authority dated 16.11.2001. That order has attained finality. The same was not challenged by the appellant/revenue. Despite the same, the Assessing Authority rejected the application for refund on the ground that it was barred by limitation under Section 11-B of the Central Excise Act, 1944 (for short 'the Act'). The Assessing Authority could not have done so in view of the said order of the Appellate Authority. It was bound by and ought to have complied with the same.

4. The respondent, however, filed an appeal for refund under Section 11-B of the Act, which was not necessary in view of the order of the Appellate Authority which had attained finality. The Commissioner (Appeals) also by mistake considered the appeal independently and by an order dated 31.03.2009 (Annexure A-5), rejected the appeal. The Tribunal allowed the appeal against this order. The amount, in any event, has already been received by the respondent.

5. This brings us to the last question. The Tribunal has imposed a cost of ₹ 10,000/- on the Assessing Officer personally for not having complied with the said order of the Appellate Authority dated 16.11.2001. There do not

appear to be any *mala fides* on the part of the Officer. He passed an order which is incorrect. A mere incorrect order ought not to invite penal consequences if made *bona fide*.

6. In the circumstances, the appeal is admitted in respect of the question (v) and the same is answered in favour of the appellant. The order of cost against the Officer is, therefore, set aside.

7. The appeal is accordingly disposed of.

(S.J. VAZIFDAR)
CHIEF JUSTICE

(ANUPINDER SINGH GREWAL)
JUDGE

06.04.2017
SwarnjitS

Whether speaking/reasoned Yes /No
Whether reportable Yes /No