

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CENTRAL EXCISE APPEAL NO. 76 OF 2016

The Principal Commissioner of Central
Excise, Mumbai - I

..Appellant

versus

Metro Shoes Pvt. Ltd.

..Respondent

Mr. M. Dwivedi with Ms Shalaka Gujar for Appellant.

Mr. Vipin Kumar Jain with Mr. P. K.Shetty and Mr. Ramnath Prabhu for
Respondent.

CORAM: S. C. DHARMADHIKARI &
SMT. BHARATI HARISH DANGRE, JJ.
DATE : 5TH FEBRUARY, 2018

P. C. :

1] This appeal of the Revenue challenges the order of the Customs, Excise & Service Appellate Tribunal, West Zonal Bench at Mumbai (CESTAT for short) in Appeal No. E/1172/2008. That appeal challenges the order of the Commissioner of Central Excise (Appeals) dated 8th October 2008.

2] The Revenue challenged that order because the Commissioner (Appeals) allowed the appeal of the assessee.

3] A show cause notice was issued and served duly on the respondent assessee. The assessee was availing credit on input services and input goods received under Rule 3 of CENVAT Credit Rules, 2004. The show cause notice issued raised according to the Tribunal the issue *inter alia* as to whether the assessee has taken input service tax credit in respect of services which are utilised beyond the place of removal and the assessee has taken credit in respect of service utilised in respect of

traded goods either partially or fully. In other words, whether the assessee has taken credit in respect of service utilised for not manufacture of goods but goods which were traded.

4] The demand of Rs.47,12,362/- was upheld in the order-in-original together with penalty and interest of equal amount. That order was appealed by the assessee and the Commissioner (Appeals) upheld the demand only in the sum of Rs.16,10,179/-. The Commissioner (Appeals) set aside the demand to the tune of Rs.31,02,183/- on input service tax credit taken by the assessee. That was taken in respect of the commission paid to retail agents in relation to branded trade in goods which are not manufactured by the assessee.

5] The assessee accepted this partial success before the Commissioner (Appeals) but the Revenue challenged the appellate order before the Tribunal.

6] It raised several contentions and which have been noted from paragraphs 3 to 5.2 of the order under appeal.

7] The appeal itself is disposed of with the following observations and findings :

"7. I observe the issue herein is squarely covered by earlier order of the Tribunal in assessee's own case 2008 (10) STR 382 dated 08.10.2008, relating to the same issue. I further find that the Ld. Commissioner (Appeals) have allowed the appeal of assessee in terms of the ruling of this Tribunal in assessee's case. Hence, I dismiss the department's appeal. The assessee is entitled to consequential relief, if any."

8] Mr. Dwivedi appearing for the Revenue in support of this appeal would submit that substantial questions of law arise for determination and consideration of this Court from the order under appeal.

9] Mr. Jain on the other hand submits that in the assessee's own case an order was passed by the Customs, Excise & Service Tax, Appellate Tribunal. That order was upheld by this Court in Central Excise Appeal No. 68 of 2009. Therefore, the Tribunal followed its earlier order in the case of this very assessee and rendered in identical facts and circumstances. Therefore, there is no error of law apparent on the face of the record or perversity in the findings of the Tribunal. There are no substantial questions of law and hence the appeal be dismissed.

10] With the assistance of both Advocates, we have perused the relevant orders and particularly the order under appeal.

11] We are of the opinion that the present appeal should be admitted on the following substantial question of law :

"(a) Whether in the facts and circumstances of the present case and in law was the Tribunal justified in disposing of the appeal by a short cryptic order and without verifying the consequences of this Court's earlier order rendered in Central Excise Appeal No. 68 of 2009 dated 13th August 2012 and a further order passed in Central Excise Appeal No. 162 of 2016 on 23rd August 2017."

12] Though the later order was not available for the Tribunal's perusal, the earlier one was definitely on its file. Whether that order rendered in 2012 and in assessee's own case concludes the matter in favour of the

assessee and nothing more is required to be adjudicated or decided is not clarified in the order under appeal. If there was only one issue and that stands concluded then the Tribunal ought not to have referred to two issues arising from the subject show cause notice dated 3rd May 2006. Whether both are concluded against the Revenue by the order of this Court as aforesaid and confirming the view of the Tribunal rendered earlier, then, there was no need to refer to CENVAT Credit Rules, the arguments of the departmental representative, the assessee. Then, on the basis of the earlier view of the Tribunal, the matter could have been disposed of. However there was a clear debate and issue and the argument of the Revenue was that that order does not deal with all the issues leave alone conclude them. There was no concession that the earlier order covers the matter fully. Instead the Revenue argued extensively why benefit of the earlier order cannot be availed of by the assessee. In the circumstances, the Tribunal was required to discuss in details the facts, set out the submissions and analyse the materials in accordance with the settled legal principles. That is not done admittedly.

13] With the consent of both sides therefore we dispose of this appeal and with their further consent we quash and set aside the impugned order. We restore the department's / revenue's appeal to the file of the Tribunal for a decision afresh on merits and in accordance with law. That decision should be rendered uninfluenced by the earlier order. We clarify that all contentions of both sides are kept open. There would be no order as to costs.

(SMT. BHARATI H. DANGRE, J.)

(S. C. DHARMADHIKARI, J.)