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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CENTRAL EXCISE APPEAL NO.166 OF 2018

The Commissioner of CGST &
Central Excise, Mumbai East
Commissionerate ...Appellant
vs.
M/s.DHL Logistics Pvt.Ltd. ...Respondent

Mr.Swapnil Bangur a/w Mr.J.B.Mishra for the appellant
Mr.Prakash Shah & Mr.Sanghvi I/b PDS Legal for the respondent

CORAM : A.S.OKA, &
M.S.SANKLECHA,JJ.
DATE : APRIL 22, 2019

P.C.:

1 This appeal under section 35-G of the Central Excise Act,1944 challenges the order dated 31st August 2017 passed by the Customs, Excise and Service Tax Appellate Tribunal, West Zonal Bench, Mumbai (for short `CESTAT').

2 Appeal is admitted on the following substantial question of law:

> “ Whether in the facts and circumstances of the case and in law was the Tribunal justified in allowing the appeal of the respondent in absence of any reasons to support its conclusion?”

3 On the request of the counsel for the parties,

appeal is taken up for final disposal forthwith in view of the narrow controversy involved.

4 Perusal of the impugned order shows that the Tribunal has allowed the appeal by recording the following:

> "2 Record reveals that show-cause notice appearing at page 28 to 31 of appeal folder does not bring out what are the material facts and evidence on which the alleged service was intended to be taxed. It may be stated that a show-cause notice is foundation of adjudication as has been held by the Apex Court in the following cases:-
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> (i) Ballarpur Industries Ltd.-2007(215)ELT 489 (SC)
> (ii) Champdany Industries – 2009 (241) ELT 401 (SC)
> (iii) Toyo Engineering Ltd.-(2006) 7 SCC 592
> (iv) Brindavan Beverages (P) Ltd-2007(213) ELT 487(SC)
>
> In absence of such foundation, opportunity of defence being denied to the appellant, the order appealed suffers from legal infirmity which is incurable at this stage. Accordingly, adjudication order fails to stand for which appeal is allowed."

5 The above paragraph clearly reveals that there is no discussion whatsoever about the respective contentions raised by the parties. It concludes the order of adjudication is bad without having tested the same on the basis of the submissions of the parties. Thus, the impugned order of the Tribunal is in breach of principles of natural justice.

6 In view of the above, the substantial question of law is answered in the affirmative that is in favour of the appellant-revenue and against the respondent-assessee. Accordingly, the impugned order dated 31st August 2017 is set aside. The Appeal is restored to the Tribunal for fresh consideration and passing an order in compliance with the principles of natural justice.

7 Appeal is disposed of in above terms.

(M.S.SANKLECHA,J.) (A.S.OKA,J.)