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

CENTRAL EXCISE APPEAL NO. 192 OF 2018

V.H. Patel & Co. .. Appellant

v/s.

Commissioner of CGST & Central Excise
Nashik .. Respondent

Mr. Bharat Raichandani & Ms. Pragya Kotwal I/b UBR Legal for the appellant
Mr. Pradeep Jetly a/w Mr. J.B. Mishra for the respondent

CORAM : A.S. OKA &
M.S. SANKLECHA, J.J.

DATED : 15th MARCH, 2019

P.C.

1. Heard the learned Counsel appearing for the appellant and the learned Counsel for the respondent.

2. The appeal is admitted on the following substantial question of law :-

Whether the Tribunal was justified in taking up the appeal preferred by the respondent Revenue and decided the same without verifying whether proper notice was served on the appellant especially when there was a cross-objection filed by the appellant?

3. Considering the very narrow controversy involved in the appeal,

we have forthwith taken up the appeal for final disposal.

4. The respondent preferred an appeal against the Order in Original dated 12th March, 2013 passed by the Commissioner (Appeals) Central Excise, Nashik. Cross-objections were filed by the appellant being aggrieved by a part of the same Order.

5. The learned Counsel appearing for the appellant pointed out that though a notice was issued and served upon the appellant informing the appellant that hearing of the appeal was fixed on 10th April, 2017, the notice was served on the very day. Hence, the appellant could not appear before the Tribunal. Therefore, an application for rectification came to be filed, which was rejected by the Tribunal by order dated 31st January, 2018. He also pointed out that by the impugned judgment and order, not only the appeal preferred by the respondent Revenue but even the Cross-objections have been disposed of without adjudicating the same on merits.

6. The learned Counsel for the respondent supported the judgment and order passed by the Tribunal.

7. We have considered the submissions. In the rectification application, a specific contention was raised that the notice of the date fixed for hearing was received by the appellant on the very day on which the hearing was fixed. By e-mail and fax, this fact was brought to the notice of the Registry of the Tribunal. Eventually, the appeal was heard on the very day. From the order passed in the rectification application, it is apparent it was not disputed that the notice of the date fixed for hearing was served on the appellant on the very day on which the hearing of the appeal was fixed.

8. In our view, it was the duty of the Appellate Tribunal to verify whether a proper notice of the appeal preferred by the respondent was served upon the appellant. Moreover, there was a Cross-objections, filed by the appellant which has been disposed of by the impugned order. Thus, the impugned judgment and order is in breach of the principles of natural justice and only on that ground, we set aside the same.

9. Accordingly, we pass following order :-

ORDER

(a) The impugned judgment and order dated 5th June, 2017 (heard on 10th April, 2017) passed by the Customs, Excise and Service Tax Appellate Tribunal, West Zonal Bench, Mumbai is hereby quashed and set aside and the Appeal (St.) No. 87438 of 2013 and ST.Cross Objection No. 91138 of 2013 are restored to the file of the Appellate Tribunal;

(b) The Appellate Tribunal shall decide the Appeal and Cross-objection in accordance with law;

(c) The appeal is partly allowed in the above terms. No order as to costs.

(d) All contentions of the parties on merits are kept open.

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