02 24.11.2021
RP Ct. No. 16
AN

WPTT 4 of 2020
with
IA No. CAN 1 of 2021
(application not found)

M/s. Coal Mines P. F. Organisation
vs.
The Commissioner of Central Excise & Service Tax,
Ranchi & ors.

Mr. Kallol Guha Thakurta
Mr. Ashis Kumar Dutta
Mr. Sayantan Banerjee
Ms. Shreyasi Manna
... for the appellant

Mr. K. K. Maiti
... for the respondents

This writ petition has been filed by the M/s. Coal Mines Provident Fund Organisation challenging the order passed by the Customs Excise and Services Tax Appellate Tribunal, Calcutta (the tribunal) dated 25.02.2020. By the said order, the tribunal has affirmed the order passed by the Adjucating Authority namely Commissioner of Central Excise and Sales Tax, Ranchi dated 22.02.2013 holding that the appellant organization is liable to pay service tax.

The writ petition has been filed under Article 226 of the Constitution of India and it has been registered by the Registry of this Court as WPTT 04/2020. From the order sheets, we find that at the very first instance, the Division Bench which heard the matter, expressed its doubt with regard to the maintainability of the writ petition under Article 226 of the Constitution of India on the ground that the statutory appeal is provided under the provisions of Finance Act read with Central Excise Act. Thereafter, the matter has been adjourned from time to time for one reason or other. Today before us, learned counsel for the respondent reiterated the preliminary objection which, in fact, was raised by the Court itself stating that in terms of the provisions of Section 35G of the Central Excise Act read with Section 83 of the Finance Act, the appeal lies before the High Court and can be entertained only if the High Court is satisfied that the case involves substantial question of law and the writ petition could not have been registered as WPTT 04/2020.

The learned counsel appearing on behalf of the petitioner submitted that the writ petition is maintainable as against the order of the tribunal and in support of his contention placed reliance on a judgment passed in the case of ***Principal Commissioner Goods and Services Tax, Delhi South vs. Premium Real Estate Developers*** dated 18.02.2020 in ***SERTA 18/2019***.

We have elaborately heard learned counsel for the parties and we sustain the preliminary objection raised by the learned counsel appearing on behalf of the respondent. We support such conclusion with the following reasons.

In terms of Section 83 of the Finance Act certain provisions of the Central Excise Act, 1944 may be applicable to the services tax regime and one such provision under Section 35G of the Central Excise Act.

Sub-section 1 of Section 35G states that an appeal shall lie before the High Court from every order passed in appeal by the appellate tribunal not being an order relating to other things, to the determination of any question having a relation to the rate of duty of excise or to the value of the goods for purpose of assessment, if the High Court is satisfied that the case involves a substantial question of law.

Furthermore, in terms of sub-section 2(a) of Section 35G of the said Act, the period of limitation for filing such appeal is 180 days from the date of the order appealed against is received by the authority or the Department.

Thus, the appeal provided under Section 35G of the said Act is not only an efficacious remedy but an effective remedy. That apart, the appellant cannot canvass the factual aspects of the matter in an appeal under Section 35G of the said Act and the High Court will entertain the appeal only if it is satisfied that the case involves substantial question of law.

Therefore, we find that there is no justifiable reason for the writ petitioner to by-pass such statutory remedy. Furthermore, in terms of the embargo under Section 35G if the issue pertains to rate of duty or the value of the goods for the purpose of assessment, then the appeal lies, before the Hon'ble Supreme Court and High Court is denude of jurisdiction to entertain the plea against an order of tribunal deciding the case pertaining to rate of duty or value of the case. In ***Premium Real Estate Developers*** (Supra), to support the case of the respondent revenue, the matter was held to be maintainable only before the Hon'ble Supreme Court.

Thus, for the reasons given hereinabove, the writ petition cannot be entertained and it is held to be not maintainable and, accordingly, is rejected.

We give liberty to the appellant to file an appeal before this court in terms of Section 35G of the Central Excise Act read with Section 83 of the Finance Act, if so advised. The Registry is directed to return the original certified copy of the order passed by the tribunal to the appellant to enable it to pursue the appeal remedy upon furnishing a Photostat copy thereof.

We make it clear that we have not gone into the merits of the case though it was the earnest endeavour of the learned counsel appearing on behalf of the petitioner to convince us that the tribunal has passed an ex parte order without affording any reasonable opportunity of hearing to the P. F. organization and also refused to recall the ex parte order inspite of an application having been filed. We leave it open to the writ petitioner to agitate all these issues in the appeal, if so advised.

(T. S. Sivagnanam, J.)

(Hiranmay Bhattacharyya, J.)