Vidya Amin

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

CENTRAL EXCISE APPEAL NO. 34 OF 2021

The Principal Commissioner of CGST and Central Excise, Mumbai East Commissionerate … Appellant

Versus

ICICI Bank Ltd. …Respondent

WITH
CENTRAL EXCISE APPEAL NO. 35 OF 2021

The Principal Commissioner of CGST and Central Excise, Mumbai East Commissionerate … Appellant

Versus

Bank of Baroda …Respondent

WITH
CENTRAL EXCISE APPEAL NO. 163 OF 2019

The Commissioner of CGST, Mumbai South … Appellant

Versus

State Bank of India …Respondent

WITH
CENTRAL EXCISE APPEAL NO. 168 OF 2019

The Commissioner of CGST, Mumbai South … Appellant

Versus

IDBI Bank Ltd. …Respondent

WITH
CENTRAL EXCISE APPEAL NO. 174 OF 2019

The Commissioner of CGST, Mumbai South … Appellant

Versus

Union Bank of India …Respondent

WITH
CENTRAL EXCISE APPEAL NO. 165 OF 2019
WITH
CENTRAL EXCISE APPEAL NO. 185 OF 2019

The Commissioner of CGST , Mumbai South … Appellant

Versus

Dena Bank …Respondent

WITH
CENTRAL EXCISE APPEAL NO. 164 OF 2019
WITH
CENTRAL EXCISE APPEAL NO. 169 OF 2019

The Commissioner of CGST, Pune-II Commissionerate … Appellant

Versus

Bank of Maharashtra …Respondent

Mr. Ram Ochani for the appellant in CEXA/34/2021.
Mr. Swapnil Bangur a/w. Ms. Ruju R. Takker for the appellant in CEXA/35/2021.
Mr. Jitendra Mishra a/w. Ms. Sangeeta Yadav for the appellant in CEXA/163/2019, CEXA/168/2019, CEXA/165/2019, CEXA/185/2019, CEXA/174/2019 and CEXA/164/2019.
Mr. Sriram Sridharan for the respondent in CEXA/34/2021 and CEXA/168/2019.
Mr. Prakash Shah a/w. Mr. Jas Sanghavi, Mr. Mihir Mehta i/b. PDS Legal for the respondent in CEXA/35/2021, CEXA/185/2019, CEXA/165/2019.

CORAM: G. S. KULKARNI & JITENDRA JAIN, JJ.
DATED: 22 June, 2023

P.C.

1. Heard learned counsel for the appellant/revenue and learned counsel for the respondents.

2. These appeals raise the following common question of law:

> *"B. Whether in the facts and circumstances of the case in hand and in law, the Hon'ble CESTAT erred in deleting the penalties as imposed by the lower authority and thereby failed to appreciate Rule 15(1) of CCR, 2004 which clearly states that it is a mandatory penalty thereunder to be imposed whenever CENVAT Credit is availed wrongly and that there is no requirement of any malafide or mens-rea required to be proved for invoking the said Rule?"*

3. The appeals arise from a common order dated 12 February, 2019 passed by the Customs, Excise and Service Tax Appellate Tribunal (for short "the Tribunal"). We are informed that the respondents/assessees, being aggrieved by the orders passed by the Tribunal, had approached this Court in a batch of appeals in Central Excise Appeal No. 148 of 2019 (Bank of Maharashtra vs. Commissioner, CGST & CX, Pune-II) & Other Appeals, which came to be allowed by an order dated 22 September, 2020 passed by a co-ordinate Bench of this Court. Such appeals of the assessees were decided taking into consideration the decision of a Larger Bench of the Tribunal in the case of South Indian Bank vs. Commissioner of Customs, C.Ex. & ST, Calicut, 2020 (41) G.S.T.L. 609. In such order, this Court observed that in view of the decision rendered by the Larger Bench of the Tribunal, the order as impugned in the appeals filed by the assessees, (being the very same order as impugned in the present proceedings) could not be sustained and the same was required to be set aside, with a further direction that the appeals of the assessees on remand be decided afresh in the light of the decision rendered by the larger bench of

the Tribunal in *South Indian Bank* (supra). It is not in dispute that on the appeals filed by the respondents/assessees, similar orders were passed by a co-ordinate Bench of this Court.

4. In the aforesaid circumstances, the principal order subject matter of challenge in the present proceedings itself is set aside in the assessee's appeals and that such appeals are remanded to the Tribunal and are subject matter of reconsideration before the Tribunal. In this view of the matter, we are of the opinion that an adjudication on the question of law (supra) as raised by the appellants would not arise, as it would open to the parties to raise all contentions on all the issues before the Tribunal, including on the issue of penalty.

5. We, accordingly, dispose of the appeals in the above terms. No costs.

6. We would permit the parties to request the Tribunal for early adjudication of the pending proceedings.

(JITENDRA JAIN, J.) (G. S. KULKARNI , J.)