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

CENTRAL EXCISE APPEAL NO. 19 OF 2023

The New India Assurance Co. Ltd. ..Appellant
Vs.
Commissioner of CGST, Mumbai South ..Respondent

Mr. V. Sridharan, Senior Advocate i/b. Mr. Shanmuga Dev and Mr. Jay Chheda for Appellant.
Mr. Advait Sethna with Ms. Niyanta Trivedi and Mr. Ranjan Majumdar i/b. Ms. Sangeeta Yadav for Respondent.

CORAM : G. S. KULKARNI &
JITENDRA S. JAIN, JJ.
DATE : OCTOBER 19, 2023

P.C.:

1. This appeal under Section 35G of the Central Excise Act 1944 read with Section 83 of the Finance Act, 1994 is filed by the appellant assailing the order dated 09 September, 2022 passed by the Customs, Excise & Service Tax Appellate Tribunal, Mumbai (for short, "CESTAT").

2. By the impugned order, after considering the rival contentions, the tribunal has questioned the acceptability of the Order-in-Original dated 09 September, 2015 passed by the Principal Commissioner of Service Tax-I, Mumbai and dropped the proposal in five show cause notices issued to the appellant for recovery of Rs.5,60,23,36,716/- on 'premium' received towards 'marine policy' for the period from 2006-07 to 2013-14. The operative portion of the order passed by the tribunal is required to be noted which reads thus:-

> "9. From the above, we can only deduce that the adjudicatory process has been incomplete and has thereby impacted the acceptability of the impugned order. It would, therefore, be appropriate to have the notices adjudicated afresh for which we set aside the impugned order and remand the matter back to the original authority for appropriate remedial action."

3. The appellant in assailing the order passed by the tribunal has raised the following questions of law for our consideration:-

> "a. Whether in the facts and circumstances of the present case, the impugned order of the CESTAT stands vitiated since it failed to decide the core legal issue namely: whether portion of premium notionally attributed by the Department towards movement of goods from a place within India to port of export in India is also covered within the scope of "*premia collected on insurance of export of goods from India*"?
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> b. Whether in the facts and circumstances of the present case, the CESTAT order of remand is contrary to the well settled principles governing when an order of remand can be passed by an Appellate Tribunal?
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> c. Whether in the facts of the present case the order of remand passed by CESTAT is vitiated since the order was passed in a perfunctory manner?"

4. The contention as urged on behalf of the appellant/assessee was to the effect that the allegation of the department in the show cause notice in question that the exemption provided under Notification No. 3/1994 related to premium collected on insurance of export of goods from India and therefore, the inland transportation from a place within India to the port of export is not exempted, is not an acceptable contention. It was contended that the insurance risk for export going cargo commences from the period the goods are loaded in a conveyance at the warehouse for export of the goods. The appellant contended that the insurance continues during the ordinary course of transit i.e. the most direct route till the port of export. It was also contended that one singe insurance premium is charged from the customers for insurance of export going cargo.

5. We also note from the record and from the impugned order passed by the CESTAT that the first show cause notice in question was issued on account of a CERA objection, that the appellant/assessee was not paying Service Tax on entire 'Marine Insurance Premium' collected by them and for such reason, the department questioned the appellant/assessee in regard to such non-payment. It is on such backdrop, the adjudicating authority had examined the breakup of the premium on 'marine policy' received by the appellant/assessee for the period in question. The tribunal, after considering the record, was of the opinion that the grounds as raised in the appeal by the revenue did not contain any cogent evidence of any misstatement or error in the finding. The tribunal has also observed that the demand for the period 2006-11 was dropped solely on the premise that CERA appeared to have accepted the stand of the service tax authorities that appropriate taxes have been discharged. The relevant observations of the tribunal in that regard are required to be noted which read thus:-

> "6. From the above, it is seen that the demand for 2006-11 has been dropped solely on the premise that CERA appeared to have accepted the stand of the service tax authorities that appropriate taxes had been discharged. CERA is the field arm of the Comptroller and Auditor General (CAG) entrusted with responsibilities in accordance with the Constitution. The correspondence between the revenue administration and the audit arm constitutes inter-departmental interface on objections raised by the latter with a hierarchy of consequences upon non-acceptance. Most often, the issue of show cause notice in furtherance of objections is sufficient satisfaction as far as the audit arm is concerned. A show cause notice is issued under the appropriate statutory empowerment and is taken to its logical conclusion, independent of the source leading to the issue of the notice, in adjudication proceedings. Such proceedings are governed by standard procedures that conform to the principles of natural justice with a specific adjudicating outcome upon evaluation of the responses to the show cause notice. From the disposal of these notices in the impugned order, we find that the obligation devolving upon the adjudicating authority has evidently not been discharged insofar as the demand the first notice is concerned.
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> 7. It is seen for that, for the remaining notices, there has been no evaluation save for the period 2011-12. The applicability of the finding for this period to the subsequent periods has not been explained in the impugned order. Furthermore, the discussion pertaining to 2011-12 has placed on record the submission made by the noticee without either detail, or examination, of the facts relating to the several exemptions claimed by the assessee.
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> 8. Furthermore, the blanket acceptance of certificates, such as

> they are, of Chartered Accountant merely owing to the assessee being a public sector unit does not lend credence to the finding thereupon; while such publicly owned entities may be excused for any flaw in discharge of their tax liabilities as not being attributable to deliberate evasion, the according of special treatment to such entities is discriminatory and not consistent with the equal treatment required of tax laws."

6. It is on such backdrop, we have heard learned counsel for the parties. We are of the opinion that the issues in regard to which the questions of law have been posed for our consideration in the present proceedings and which had arisen, are not the issues which were examined by the CESTAT. We are thus of the opinion that in the facts and circumstances of the case, it would be appropriate that the proceedings instead of being remanded to the adjudicating officer, as done by the tribunal ought to be remanded to the CESTAT, so as to consider these issues on which the questions of law have been posed for our consideration. We are also of the opinion that once these issues are examined and decided by the tribunal, the other issues if they arise, can be gone into, in regard to which all contentions of the parties would be required to be kept expressly open. We accordingly dispose of this appeal by the following order:-

ORDER

i. The impugned order dated 09 September, 2022 passed by the

CESTAT is set aside.

ii. The proceedings of Service Tax Appeal No. 85066 of 2016 with Cross-Objection No. 91038 of 2016 shall stand restored to the CESTAT for adjudication on the issues as discussed by us above.

iii. All contentions of the parties in that regard are expressly kept open. Subject to what would be decided by the tribunal on the issues as raised in the present appeal, in the event the need so arises on any other issues, all contentions of the parties are also expressly kept open.

iv. Disposed of in the above terms. No costs.

v. Needless to observe that the remand is only on the questions of law which have been placed before us. We have not thus delved on any other issues or questions of law other than what has been urged before us by the appellant/assessee.

[JITENDRA S. JAIN, J.] **[G. S. KULKARNI, J.]**