Prajakta Vartak

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

CENTRAL EXCISE APPEAL NO. 20 OF 2020

The Commissioner of CGST & Central
Excise, Belapur Commissionerate ..Appellant
Vs.
M/s. Savita Oil Technologies Ltd. ..Respondent

Mr. Jitendra Mishra with Ms. Sangeeta Yadav for Appellant.
Mr. Vaibhav Shah for Respondent.

CORAM : G. S. KULKARNI &
JITENDRA S. JAIN, JJ.
DATE : JUNE 22, 2023

P.C.:

1. We have heard learned counsel for the parties.

2. The appellant has raised the following questions of law:-

"(a) The Impugned Order dated 22.09.2017 passed by CESTAT, Mumbai is illegal, baseless, perverse and bad in law.
(b) The CESTAT has not gone into the merits of the case but decided the issue solely on the validity of sub-section 7(A) of Section 11 A of the Central Excise Act, 1944 and held that the said sub-section is relevant for the issue of demand for a particular period for which Show Cause Notice was issued and not for the subsequent period.
(c) The CESTAT has completely mis-interpreted the provisions of Sub-section 7(A) of Section 11A of the Central Excise Act, 1944.
(d) The CESTAT failed to appreciate that on plain reading of said Sub-section 7(A), it is amply clear that the said section provides for the issuance of demand for the subsequent period in the form of statement. The only condition for the said statement is that the ground relied upon for the subsequent periods are the same as are mentioned in the earlier notice or notices.
(e) The CESTAT failed to appreciate that in the present case the Statement of Demand to Show Cause Notice dated 08.02.2016 has a

clear mention in para 2 as Details of previous SCNs – (Grounds mentioned therein form part and parcel of the present statement of demand), thus the statement of demand in the instant case is fulfilling the conditions as mentioned in sub-section 7(A) of Section 11A of the Central Excise Act, 1944 and hence, it is proper and legal.

(f) The CESTAT has erred in interpreting the statute to the extent provisions of sub-section 7(A) of Section 11A of the Central Excise Act, 1944 is limited to a particular period for which the notice was issued but not for other period. Whereas, the provisions clearly states as "Officer may, serve, subsequent to any notice or notices served under any of those sub-sections, as the case may be, a statement, containing the details of duty of central excise not levied or paid or short-levied or short-paid or erroneously refunded for the subsequent period".

(g) The CESTAT ought to have appreciated that from the statute, it is amply clear that the statement of demand is meant for the subsequent period and not for the period for which a notice was issued as erroneously interpreted by the CESTAT.

(h) The Appellant craves leave to add, alter and amend the grounds of appeal as and when required."

3. This appeal is filed by the appellant-revenue being aggrieved by the impugned order dated 22 September, 2017 passed by the Customs, Excise & Service Tax Appellate Tribunal whereby the respondent's appeal has been partly allowed by modifying the order-in-original dated 20 May, 2016 wherein it is held that the appellant is eligible for cenvat credit of service tax paid on services of Tour Operators and Works Contract. The cenvat credit of service tax as credited by the respondent was in the tune of Rs.1,14,291/- on which a penalty under the provisions of Section 11A(1)(a) of the Central Excise Act, 1944 was ordered in the order-in-original. The tribunal by the impugned order has reduced the same to the extent of inadmissible cenvat credit of Rs. 82,794/-.

4. Learned counsel for the respondent has drawn our attention to the circular issued by the Central Board of Excise & Customs dated 17 August, 2011 and the subsequent circular dated 22 August, 2019. Our attention is drawn to paragraph 4 of the said circular dated 22 August, 2019. The said circular reads thus:-

> " Subject: Reduction of Government Litigation – Raising of monetary limits for filing appeals by the Department before CESTAT/High Courts and Supreme Court in Legacy Central Excise and Service Tax-regarding.
>
> In exercise of the powers conferred by Section 35R of the Central Excise Act, 1944 and made applicable to Service Tax vide Section 83 of the Finance Act, 1994, the Central Board of Indirect Taxes and Customs fixes the following monetary limits below which appeal shall not be filed in the CESTAT, High Courts and Supreme Court.

S. No.	Appellate Forum	Monetary Limit
1.	CESTAT	Rs. 50,00,000/-
2.	High Courts	Rs. 1,00,00,000/-
3.	Supreme Court	Rs. 2,00,00,000/-

> 2. This instruction applies only to legacy issues i.e. matters relating to Central Excise and Service Tax, and will apply to pending cases as well.
>
> 3. Withdrawal process in respect of pending cases in above forums, as per the above revised limits, will follow the current practice that is being followed for the withdrawal of cases from the Supreme Court, High Courts and CESTAT. All other terms and conditions of concerned earlier instructions will continue to apply.
>
> 4. <u>It may be noted that issues involving substantial questions of law as described in para 1.3 of the instruction dt. 17.08.2011 from F. No. 390/Misc/163/2010-JC would be contested irrespective of the prescribed monetary limits.</u>"
>
> (emphasis supplied)

5. To appreciate the contents of paragraph 4 of the above circular, we are required to refer to paragraph 3 of the circular dated 17 August, 2011 which states that adverse judgments relating to the following should be contested irrespective of the amount involved: (a) Where the constitutional validity of the provisions of an Act or Rule is under challenge. (b) Where Notification/ Instruction/Order or Circular has been held illegal or ultra vires.

6. It is thus clear from the above circulars which are binding on the revenue that the monetary limit for the revenue to approach this Court in an appeal would be when the claim amount is of Rs. 1 Crore and above. Thus in respect of a claim for an amount involving Rs. 1 Crore and below would not be maintainable as per the said circulars.

7. In this view of the matter, as also considering the above questions of law as raised by the revenue, in assailing the impugned order passed by the tribunal, we are of the opinion that the appeal would not deserve adjudication and/or is not maintainable.

8. It is accordingly disposed of. No costs.

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