IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CENTRAL EXCISE APPEAL NO. 2 OF 2025

Dosti Corporation Vihar .. Appellant

Versus

Commissioner Service Tax-1, Mumbai .. Respondent

Mr. Bharat Raichandani a/w Dhanistha Kawale i/b. UBR Legal, Advocate for the Appellant.

Mr. Ram Ochani a/w Niyati Mankad a/w Priyanka Singh, Advocate for the Respondent.

CORAM: B. P. COLABAWALLA &
AMIT S. JAMSANDEKAR, JJ.
DATE: SEPTEMBER 10, 2025

P. C.

1. The above Appeal has been filed by the Appellant/Assessee challenging the impugned order passed by the Customs, Excise and Service Tax Appellate Tribunal, Mumbai dated 21.02.2023. According to the Appellant/Assessee, the impugned order passed by the Tribunal raises the following substantial questions of law :-

> *"5. In the facts and circumstances stated above, the appellants submit that the following substantial questions of law arise for consideration and determination of this Honorable Court :*

(a) *Whether, in the facts and circumstances of the present case, the Appellate Tribunal was correct and justified in passing an ex-parte order ?*

(b) *Whether, in the facts and circumstances of the present case, the Appellate Tribunal was correct and justified in passing an ex-parte order despite noting the appearance of the appellant and filing of written submissions in the opening line of the order ?*

(c) *Whether, in the facts and circumstances of the present case, the Appellate Tribunal was correct and justified in passing an ex-parte and non-speaking order failing to provide one last opportunity to the appellant to appear in the matter ?*

(d) *Whether, in the facts and circumstances of the present case, the Appellate Tribunal was correct and justified in passing a non-speaking order without considering the submissions on merits in gross violation of principles of natural justice, equity, fair play and good conscience ?*

(e) *Whether, in the facts and circumstances of the present case, the Appellate Tribunal was correct and justified in passing an adverse order despite there being tribunal decisions in favour of the appellant ?*

(f) *Whether, in the facts and circumstances of the present case, the Appellate Tribunal was correct and justified in upholding the demand for the normal period of limitation ?*

(g) Whether, in the facts and circumstances of the present case, the Appellate Tribunal was correct and justified in passing in the impugned order not following the judgment of the Supreme Court in the case of ***J K Synthetics*** *(infra) ?"*

2. According to the Appellant/Assessee, though the impugned order raises seven substantial questions of law (as more particularly set out in paragraph No. 5 of the Memo of Appeal), Mr. Raichandani, the Learned Advocate appearing on behalf of the Appellant submitted that basically the substantial question of law to be considered is as under :-

"(d)- Whether, in the facts and circumstances of the present case, the Appellate Tribunal was correct and justified in passing a non-speaking order without consideration the submissions on merits in gross violation of principles of natural justice, equity, fair play and good conscience ?"

3. With the consent of the parties, we Admit the above the Appeal on the above substantial question of law and hear the above Appeal finally.

4. The impugned order passed by the Tribunal is a short order which is reproduced here under :-

"The appellant in the earlier hearing had submitted a written submission. The learned AR has submitted that the applicant had no paid Service Tax on construction of club house but availed CENVAT

Credit of the Service Tax paid on inputs going into the construction of club house and therefore the said CANVAT Credit of Rs. 20,32,842/- was not eligible to them. The appellant has submitted in this appeal memo that the demand of Rs. 14,86,351/- was raised for the period 2012-13 and the date of issue of show cause notice is 15.10.2015. The date of filing of return was 01.09.2013. Therefore, had the show cause notice, been issued by 04.03.2015, the same would have been within the normal period. The appellant had submitted that the show cause notice was issued on 15.10.2015 and therefore exceeded the limitation period provided by Section 73 of the Finance Act, 1994.

2. I have carefully gone through the records of the case and the submissions made by the learned AR. I find that during the relevant period, normal period for issue of demand was 18 months. In the present case, the demand of Rs. 14,86,351/- was raised after laps of 18 months and therefore the same is hit by limitation. The impugned order is set aside to the extent the same was hit by limitation. Some demand falls within the normal period since the Service Tax was not paid on the output service, I do not interfere with the conformation of demand of Rs. 05,46,131/- and penal action for the same ordered in the impugned order. The appeal is partially allowed in above manner."

5. On perusal of this order, we find that the merits of the matter have not been touched at all by the Tribunal. In fact, the merits of the matter have been set out in great detail not only in the Appeal filed before the Tribunal but also in the written submissions filed before the Tribunal. Though the Tribunal notes that written submissions were filed by the

Appellant/Assessee, there are no findings given by the Tribunal in relation to the merits of the matter. This is apart from the fact that the counsel appearing for the Appellant was before another bench of the Tribunal and therefore could not attend the matter.

6. Considering these facts and circumstances, we are of the view that the impugned order deserves to be set aside and the matter be remanded back to the Customs, Excise and Service Tax Appellate Tribunal for a fresh consideration. We, accordingly, so order and direct that CESTAT shall hear the Appellant/Assessee in Service Tax Appeal No.88114 of 2018 afresh, after giving an opportunity to the Appellant to appear in the above matter.

7. The above Appeal is disposed of in the aforesaid terms. However, there shall no order as to costs.

8. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[AMIT S. JAMSANDEKAR, J.] **[B. P. COLABAWALLA, J.]**

Santosh Chabukswar- Court Steno.