(2014) 04 GUJ CK 0113

In the Gujarat High Court

Case No : Tax Appeal No. 172 of 2014 (Arising out of order of CESTAT dated 15-2-2013)

Banas Security and Personal Force — APPELLANT

Vs

Commissioner of Central Excise and Service Tax — RESPONDENT

Date of Decision : 10-04-2014

Acts Referred:

Citation : (2014) 45 GST 403 : (2015) 38 STR 933

Hon'ble Judges : Sonia Gokani, J;Akil Abdul Hamid Kureshi, J

Bench : Division Bench

Advocate : Paresh M. Dave and Kuntal Parikh, Advocate for the Appellant; Y.N. Ravani, Advocate for the Respondent

Judgement

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Akil Abdul Hamid Kureshi, J.—While issuing notice for final disposal, we had passed following order:-

1. Draft amendment is allowed.

2. The appellant has challenged an order dated February 15, 2013 passed by the Customs, Excise and Service Tax Appellate Tribunal (hereinafter referred to as the Tribunal) and further order dated March 15, 2013, under which the appellants request for rectification came to be turned down by the Tribunal.

3. From the said orders, it can be noticed that on February 15, 2013, the appellant had not remained present before the Tribunal, but had sent a request to decide the appeal on merits after considering the synopsis and compilation already filed. From such synopsis and compilation, a copy of which was placed on record by the Counsel for the appellant, he pointed out that the appellant had taken an important ground of non-includibility of certain amounts in computation of service tax liability of the appellant. In the written submissions, the appellant had submitted inter alia as under:

2. Valuation of taxable service: a) As per judgment of the Hon''ble Tribunal, Staff Salary and other infrastructural expenses are to be excluded from the gross amount received for Security Service. This has not been done and, therefore, the service tax calculated is on much higher value. Please refer to the following judgments of the Hon''ble Tribunal:

(i) Malabar Management Services (P.) Ltd. v. CST 2008(84) RLT 788 (CESTAT-Chennai)

(ii) 2009 (15) S.T.R. 237

(iii) S. Jayashree v. CCE 2007(80) RLT 913 (CESTAT-Bang.)

3. That the Appellant''s firm being a proprietorship firm, cannot be considered as Security Agency, vide Section 65(93) & 65(105)(w), as clarified by the Board in its Circular No. B3/7/2003-TRU dated 21.8.2003 (copy enclosed at P/34), and No. B11/1/2002-TRU dated 1.8.2002 (P/37). Please also refer to the following judgments of the Hon''ble Tribunal:

i. (2008) 13 STJ 148

ii. Kannappa Corporation v. CCE 2010(96) RLTONLINE 484 (CESTAT)

4. The Tribunal, on the other hand, dealt with only the question of penalty and did not address to the above issue. Such issue was also raised by the appellant before the Commissioner (Appeals) as is apparent from the appeal memo at Annexure-B.

5. Under the circumstances, issue notice for final disposal, returnable on April 10, 2014.

From the said order it can be seen that the appellant''s grievance is with respect to order dated 15.2.2013 passed by the Tribunal on an application for rectification filed by the appellant. Quite apart from the grievance of the appellant that an important ground/contention raised in written submission was not considered, we notice that the appellant had not remained present before the Tribunal but had merely sent a request letter to decide the appeal on merits after considering the synopsis and compilation already filed. To avoid further complications the counsel for the appellant stated that if the appeal is remanded before the Tribunal for fresh consideration, the appellant would appear in person or through his authorized representative and canvas all available arguments before the Tribunal.

2. Order of the Tribunal dated 15.3.2013 refusing to recall its order in original dated 15.2.2013 is set side. It is further directed that the appeal itself be heard afresh and decided on merits after hearing both the sides. For such purpose order dated 15.2.2013 also shall not survive. Tax Appeal is disposed of in above terms with two clarifications however. Firstly, the appellant shall appear before the Tribunal as and when the date of hearing is fixed either in person or through authorized representative and secondly we have expressed no opinion on the

merits or demerits of the rival contentions.

