(2014) 10 BOM CK 0133

In the Bombay High Court

Case No : Central Excise Appeal (L) No. 317 of 2014

City & Indus. Dev. Coprn. of Maharashtra Ltd. APPELLANT

Vs

C.S.T. RESPONDENT

Date of Decision : 13-10-2014

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35F
Finance Act, 1994 — Section 65(105)(zzzz), 83

Citation : (2015) 37 STR 165

Hon'ble Judges : S.C. Dharmadhikari, J;A.K. Menon, J

Bench : Division Bench

Advocate : V. Sridharan, Senior Counsel and Prakash Shah i/b PDS Legal, Advocates for the Appellant; Pradeep S. Jetly and Anakima Malhotra, Advocates for the Respondent

Judgement

1. The City and Town Development Authority has filed this appeal to challenge an interim order of the Tribunal. We have heard Mr. Sridharan, learned Senior Counsel, appearing for the assessee and Mr. Jetly, learned counsel, appearing for the Revenue. After perusing with their assistance the impugned order of the Tribunal, we proceed to admit this appeal. It is admitted on the following substantial question of law:--

"Whether in the facts and circumstances of the case, the Appellate Tribunal was justified in directing pre-deposit of Rs. 20 crores to the appellant in terms of Section 35F of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994?"

With the consent of both advocates and parties, we dispose of the appeal finally.

2. The appellant-assessee submits that the Tribunal has found that it has made out a strong prima facie case. The Tribunal has also found that the issue is arguable. The Tribunal has also not disputed that the appellant is a State of Maharashtra undertaking and is a New Town Development Authority within the

meaning of the said term appearing under the "Maharashtra Regional and Town Planning Act, 1966." In such circumstances, it being an organization or agency of the State, the dues of the Revenue are secured. That being the position and now the issue having been answered finally in favour of such assessee by order passed by the Tribunal in the case of M/s. Greater Noida Industrial Development Authority v. Commissioner of Central Excise and Service Tax, Noida in Income Tax Appeal Nos. ST/59067/2013 and ST/3256/2012 decided on 28th August, 2014, then, the Tribunal should have granted an unconditional stay and waiver of pre-deposit in its entirety. Having directed the public authority to pay a sum of Rs. 20 crores, at this stage, has caused prejudice and when the question of law has been answered in favour of such assessee.

3. Reliance is placed by Mr. Sridharan on the order passed by the Tribunal and which is stated to be the final order of the Customs, Excise and Service Tax Appellate Tribunal, Principal Bench, New Delhi.

4. Mr. Jetly, on the other hand, submits that the order passed and impugned in this appeal, is just, fair and proper as against a demand of Rs. 136 crores. The Tribunal has only directed the deposit of Rs. 20 crores. In such circumstances, the appeal does not raise any substantial question of law.

5. We have heard both sides and we are of the opinion that the Tribunal is considering interpretation of the term "Taxable Service" as defined in Section 65(105)(zzzz) of the Finance Act, 1994. That is enabling the levy, assessment and recovery of Service Tax on the services which have been provided or to be provided to any person by any other person, by renting of immovable property or any other service in relation to such renting, for use in the course or furtherance of business or commerce. Therefore, the levy could be on the quantum of rent received by such authority month to month or year to year or whether it would also include a tax leviable, if any, on a lump sum amount received as premium. The final view of the Principal Bench of the Tribunal is the Service Tax is leviable on the quantum of lease and not on the lease premium. The premium is a one time lump sum payment whereas the lease comes into effect and as an interest created in the immovable property on payment of the rent. That is not rent according to the Tribunal''s final order. In such circumstances, while reserving any opinion on the correctness of this view, what we find is that the point at this stage appears to be prima facie covered in favour of the appellant-assessee. In these circumstances, the Tribunal should not have insisted even otherwise on securing a Revenue in the sum of Rs. 20 crores as directed. This was a fit case when the pre-condition of the deposit of the duty liability could have been waived and in its entirety. Further, the recovery of taxes should have been stayed unconditionally pending disposal of the appeal. In the light of the above discussion, we allow this appeal by setting aside the impugned order. There shall be waiver of the pre-condition of deposit of the tax/duty demanded and unconditional stay of recovery during the pendency of the appeal before the Tribunal. No order as to costs.