(2022) 08 SIK CK 0040

In the Sikkim High Court

Case No : Tax Appeal No. 01 Of 2019, Cross-Objection No. 01 Of 2022

Commissioner Of Central Excise & Service Tax, Siliguri Commissionerate, Siliguri & Ors — APPELLANT

Vs

M/S Perfect Technologies & Ors — RESPONDENT

Date of Decision : 25-08-2022

Acts Referred:
Central Excise Act, 1944 — Section 37A
Central Excise Rules, 2002 — Rule 3

Citation : (2022) 08 SIK CK 0040

Hon'ble Judges : Biswanath Somadder, CJ;Meenakshi Madan Rai, J

Bench : Division Bench

Advocate : Sudipto Mazumdar, Dilip Kumar Agarwal, Aditya Dutta, Gita Bista

Final Decision : Disposed Of

Judgement

Biswanath Somadder, CJ

The instant statutory Tax Appeal was initially admitted on the substantial questions of law as framed by the Court in its order dated 07th October, 2020. During pendency of the Appeal, a cross-objection was filed by the respondent. Since there was a delay in filing of the same, this Court, after considering the submissions made by the learned advocates for the parties and upon perusing the application for condonation of delay, allowed the same and condoned the delay in filing of the cross-objection, which was brought on record in terms of the order dated 04th August, 2022. By another order dated 04th August, 2022, passed in Tax Appeal No. 01 of 2019, this Court directed that both, the appeal along with the cross-objection filed by the respondent, would be taken up for consideration under an appropriate heading on Thursday, 25th August, 2022.

Today, when both matters are taken up for consideration, we notice that the primary contention of the respondent — as pleaded in the cross-objection — is with regard to the lack of jurisdiction of Shri C.M. Mehra, to pass the original order of adjudication in his capacity as the Commissioner of Central Excise &

Service Tax, Siliguri, at the material point of time. We further notice that when the two connected service tax appeals were initially taken up for consideration by the Customs, Excise and Service Tax Appellate Tribunal, East Regional Bench, Kolkata, a stay order was passed on 08th July, 2008, wherein the learned Tribunal waived the requirement of predeposit in respect of both the Service Tax Appeals No. 311-312/2008, primarily on three grounds, one of which reads as follows: -

‶ (iii) We find that the impugned Order has been passed by Shri C.M. Mehra in his purported capacity as Commissioner of Central Excise & Service Tax, Siliguri. We have held in the case of Commissioner of Central Excise, Siliguri vs. Mall Eximp (P) Ltd., vide Tribunal's Misc. Order No.M-183-185/KOL/08 dated 30.06.08, that Shri Mehra lacked jurisdiction to act as Commissioner, Siliguri under the Central Excise Statute not having been appointed to and vested with such jurisdiction by the Board. Consequently, the impugned Order passed by him under the Service Tax Statute also prima facie appears to have been passed without having the necessary jurisdiction. ″

From the records we also notice that subsequently the respondent, M/s Perfect Technologies, had filed an application before the learned Customs, Excise and Service Tax Appellate Tribunal, East Regional Bench, Kolkata, seeking inclusion of additional grounds in the appeal, which, inter alia included the following ground: -

‶ 5. The applicant further submits that there was no locus standi to adjudicate the issue in dispute in as much as the concerned Commissioner, who had been asked by the jurisdictional Chief Commissioner to hold the charge of Siliguri Commissionerate, was not vested with powers and to deal with adjudication proceedings in terms of Rule 3 of Central Excise Rules, 2002. It is interesting to note that the CBEC, New Delhi had not delegated the powers to the Chief Commissioner, nor the Government had issued any notification empowering the Chief Commissioner under section 37A of the Central Excise Act, 1944. The Chief Commissioner and the Commissioner exceeded their jurisdiction while exercising the power in their own domain. Both the authorities acted contrarily to the provisions of law in vogue. In this regard the Hon’ ble Bench had observed, "We find that the impugned Order has been passed by Shri C.M. Mehra in his purported capacity as Commissioner of Central Excise & Service Tax, Siliguri. We have held in the case of Commissioner of Central Excise, Siliguri vs. Mall Exim (P) Ltd., vide Tribunal's Misc. Order No.M-183-185/KOL/08 dated 30.06.08, that Shri Mehra lacked jurisdiction by the Board. Consequently, the impugned Order passed by him under the Service Tax Statute also prima facie appears to have been passed without having the necessary jurisdiction."

The ground to that effect is set out incorporated in the Annexure "A" and be added after ground "K" in the main Appeal ″

From a plain reading of the impugned judgment and order passed by the learned Customs, Excise and Service Tax Appellate Tribunal, East Regional Bench, Kolkata, dated 28th November, 2018 — wherefrom Tax Appeal No. 01 of 2019 emanates — we notice that the learned Tribunal has not considered the issue which was specifically raised by the respondent, M/s Perfect Technologies, in its application seeking inclusion of additional grounds in the appeal regarding the lack of jurisdiction of Shri C.M. Mehra — who at the material point of time was the Commissioner of Central Excise and Service Tax, Siliguri — to pass the original order of adjudication.

We are of the view that this issue is required to be answered by the learned Customs, Excise and Service Tax Appellate Tribunal, East Regional Bench, Kolkata, specifically, since it is relevant for the purpose of deciding the appeal which is pending before this Court. As such, while we keep the instant Tax Appeal No. 01 of 2019 pending for further consideration, we dispose of the cross-objection filed by the respondent, M/s Perfect Technologies, with a direction upon the learned Customs, Excise and Service Tax Appellate Tribunal, East Regional Bench, Kolkata, to decide on this issue after giving adequate opportunity of hearing to both parties, preferably within a period of three (3) months, but not later than four (4) months from date of communication of a photostat certified copy of this order. Once this issue is decided, Tax Appeal No. 01 of 2019, will be taken up for further consideration.

Cross-objection No. 01 of 2022, stands accordingly disposed of.

List the Tax Appeal No. 01 of 2019, under an appropriate heading immediately after the expiry of the period mentioned hereinabove.