(2010) 04 GUJ CK 0117

In the Gujarat High Court

Case No : Tax Appeal No. 503 of 2009 with Tax Appeal No. 570 of 2009

Commr. of C. Ex. and Cus., Daman APPELLANT

Vs

Sitaram Ganaji Sawardekar RESPONDENT

Date of Decision : 28-04-2010

Acts Referred:

Citation : (2011) 271 ELT 207

Hon'ble Judges : Harsha Devani, J;D.A. Mehta, J

Bench : Division Bench

Advocate : R.J. Oza, for the Appellant; Jigar Shah for B.L. Narashiman, for the Respondent

Final Decision : Allowed

Judgement

H.N. Devani, J.—On 10th March 2010, this Court had passed orders in the following terms in both these appeals :

(1) Though appellant-revenue has proposed as many as four questions in this tax appeal stated to be substantial questions of law, a plain reading of the impugned order of Customs, Excise and Service Tax Appellate Tribunal (the Tribunal) dated 4th August, 2008 indicates that the appeal of revenue has been dismissed by the Tribunal only on the ground of proceedings being barred by limitation as the extended period for assessment was not available to the revenue. However, the impugned order of Tribunal nowhere indicates that any opportunity of hearing was granted to appellant-revenue in relation to this aspect before the Tribunal made the impugned order.

(2) Hence, admit. Following substantial question of law arises for determination :-

Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in deciding the issue of limitation without giving an opportunity of hearing to appellant revenue on the said issue.

Notice for final disposal returnable on 7th April, 2010.

2. In response to the notice, Mr. Jigar Shah, learned advocate appears on behalf of the respondent.

3. Since both the appeals arise out of common order made by the Tribunal, they were heard together and are disposed of by this common judgment.

4. Heard the learned advocates for the respective parties.

5. The learned Senior Standing Counsel for the appellant has reiterated the submissions made earlier and argued that while dismissing the appeals preferred by the appellant on the ground of limitation, the Tribunal has not granted any opportunity of hearing in that regard. On the other hand, the learned advocate for the respondents has submitted that limitation being a question of fact, can be gone into at any stage of the proceedings and has supported the impugned order of the Tribunal.

6. A perusal of the impugned order of the Tribunal shows that in paragraphs 1 and 2 thereof, the Tribunal has recorded the facts of the case. In paragraph 3, the Tribunal has recorded the presence of the learned SDR and the fact that there is no appearance on behalf of the respondent. The Tribunal has thereafter recorded the submissions of the learned SDR on the merits of the case. In paragraph 4 the Tribunal has recorded that it is not necessary to go into the merits of the case and after recording certain facts has dismissed the appeals on the ground that the show cause notice should have been issued within the normal period of limitation, and that, extended period of limitation could not have been invoked. On reading the entire order, there is nothing to show that while considering the question as to whether the extended period of limitation could have been invoked the appellant has been called upon to make any submissions in that regard. A perusal of the order of the Commissioner (Appeals) shows that the appeals of the respondents had been allowed on merits and not on the ground that the show cause notice was time-barred. In such circumstances, if the Tribunal was inclined to dismiss the appeals on the ground of limitation, the least it could have done was to give an opportunity to the revenue to deal with the same. In absence of such opportunity having been given to the appellant, the impugned order of the Tribunal suffers from the breach of the principles of natural justice and as such, cannot be sustained.

7. For the foregoing reasons, the appeals are allowed. The impugned order of the Tribunal is hereby set aside. Central Excise Appeals No. 334 of 2005 and 335 of 2005 are restored to the file of the Tribunal. The Tribunal shall decide the appeals afresh in accordance with law, after giving an opportunity of hearing to the parties.