
(2010) 06 BOM CK 0023

In the Bombay High Court

Case No : Central Excise Appeal No. 49 of 2010

Commr. of Central Excise

APPELLANT

Vs

Techno Economic Services Pvt. Ltd.

RESPONDENT

Date of Decision : 21-06-2010

Acts Referred:

Income Tax Act, 1961 — Section 268

Citation : (2010) 20 STR 707

Hon'ble Judges : V.C. Daga, J;S.J. Kathawalla, J

Bench : Division Bench

Advocate : A.S. Rao, for the Appellant; None, for the Respondent

Final Decision : Disposed Off

Judgement

V.C. Daga, J.—Heard learned Counsel for the Appellant. None appears for the Respondent in spite of service. Perused appeal and the impugned order.

2. This appeal is directed against the order dated 29th October, 2009 2010 (251) ELT 464 passed by the Customs, Excise and Sales Tax Appellate Tribunal, West Zonal Bench at Mumbai ("Tribunal" for short) raising question of law; wherein central excise duty recoverable from the Respondent, if at all Revenue succeeds, would be in the sum of Rs. 1,21,219/-. The question sought to be raised in this appeal relates to the imposition of penalty on the Respondent. The said issue was considered by the Tribunal in para-10 of its judgment with which no fault can be found. The view taken by the Tribunal is a reasonable and possible view. Hence appeal is liable to be dismissed for want of substantial question of law.

3. At this juncture, it is relevant to note that number of appeals are being filed before this Court; wherein the customs duty and/or central excise duty involved is negligible. One of the appeals bearing Central Excise Appeal No. 1/2005 involved stake of Rs. 5,000/- only. It is noticed that most of the times the duty impact ranges between Rs. 2 to 3 lakh; wherein, normally, senior advocates appear on behalf of Revenue assisted by two junior advocates. In spite of

engaging multiple advocates, adjournments are sought. The matters are allowed to remain pending in the Court for a substantially long period of time. With the result, they come up for hearing on more than two or three occasions. Adjournments are always taken and granted by the Court considering the substantial cause shown for the adjournment. All this results in payment of heavy professional charges to the advocates appearing for the department. Sometimes the expenses incurred by the Revenue are disproportionate to the stakes involved in the appeal and/or petition filed by the department.

4. In the aforesaid scenario, one can take judicial notice of the fact that the Centre and the States have acquired the "government is largest litigant" tag, accounting for 70% of the 3 crore cases -- over 2.1 crore pending in various Courts.

5. Now, the Central Government has formulated a National Litigation Policy (NLP) to shed the tag "Largest Litigant". Thus, keeping in view the policy of the Central Government, the time has come to invite attention of the Chairman of the Central Board of Excise and Revenue ("the Board") to consider the necessity of taking policy decision not to file cases; wherein the duty/tax impact is negligible. The similar policy is already in vogue so far as Income Tax Department is concerned. The Central Board of Direct Taxes ("CBDT" for short) vide its circular dated 27th March, 2000 followed by other circulars dated 24th October, 2005 and 15th May, 2008 has taken a policy decision not to file appeals or references wherein the tax effect is less than the amount prescribed in the instructions issued from time to time, so as to reduce litigation before the High Courts and the Supreme Court. The said policy decision taken by the CBDT has definitely reduced volume of litigation, with the result, their officers are in a position to concentrate on the cases involving heavy stakes. The validity, impact and the binding nature thereof have been the subject matters of judicial scrutiny of this Court in the case of *The Commissioner of Income Tax Vs. Pithwa Engg. Works*, ; *Commissioner of Income Tax Vs. Zueb Y. Topiwala*, , *Commissioner of Income Tax Vs. Camco Colour Co.*, and *Commissioner of Income Tax Vs. Polycott Corporation*, ; wherein this Court had occasion to observe as under:

8. On the other hand on behalf of the Assessee learned Counsel submits that filing of an appeal is referable to the issues. In other words if in respect of an appeal which is to be filed where the monetary limit exceeds Rs. 4.00 lakhs then in respect of the other years where the monetary effect is less the issue involved must be the same. Otherwise no appeal can be preferred.

9. Having considered the contentions, in our opinion, the instructions cannot be interpreted as a Statute though it is pursuant to the power conferred u/s 268A of the Income Tax Act. What the Court has to consider is the plain language of the paragraph and the object behind the said provisions. The object appears to be not to burden courts and Tribunals in respect of matters where the tax effect is less than the limit prescribed. Even before this instruction CBDT has been issuing instruction, the last one being on 24th October, 2005 where the monetary limit

has been fixed. In those instructions the only exception had been that in cases involving substantial question of law of importance as well as in cases where the same question of law will repeatedly arise, either in the case concerned or in similar case, appeal should be filed without being hindered by the monetary limits. The present instructions seems even to limit the issues in so far as the same question of law or recurring issue except to the extent provided in para. 5.

(Emphasis supplied)

6. It has, therefore, become necessary for the Board to impress upon the departmental heads not to go for appeals and litigation wherein tax or duty impact is not substantial, otherwise it results in harassment to the Assesseees and creates unnecessary burden on the infrastructure of the Revenue department. The "let the Court to decide" attitude needs to be given go bye.

7. On the aforesaid backdrop, we hope that the Chairman of the Central Board of Excise and Revenue shall consider the necessity of issuing circular, on the lines of the circulars issued by the CBDT, so as to reduce litigations arising out of indirect tax legislations. This will definitely go a long way to reduce pendency of the cases in the various Courts and at the same time will help the officers of the department to concentrate more on the cases involving heavy stakes. Eventually, litigation expenses, burden of the Courts as well as that of the Revenue department to a considerable extent would get reduced.

8. Writ petition is disposed of in terms of this order with no order as to cost.

9. The Prothonotary and Senior Master is directed to forward the copy of this order to the Chairman, Central Board of Excise and Revenue, Ministry of Finance, Department of Revenue, North Block, New Delhi- 110 001 for consideration and action.