(2013) 10 BOM CK 0245

In the Bombay High Court

Case No : Writ Petition No. 1222 of 2010

Sambhav Interchem Private Limited APPELLANT

Vs

State of Maharashtra and Others RESPONDENT

Date of Decision : 01-10-2013

Acts Referred:

Citation : (2014) 67 VST 327

Hon'ble Judges : Mohit S. Shah, C.J;M.S. Sanklecha, J

Bench : Division Bench

Advocate : C.B. Thakkar instructed by C.B. Thakkar and Co, for the Appellant; Uma Palsuledesai, Additional Government Pleader, for the Respondent

Judgement

1. Rule. Returnable forthwith. At the instance and request of the counsel for the parties the petition is taken up for final hearing. This writ petition is a classic illustration of misunderstanding on the part of the advocate resulting into unnecessary complications for the litigant requiring him to pay or to comply with Central sales tax demand of more than Rs. 30 lacs. The complications arose on account of the advocate withdrawing the petitioner''s second appeal before the Sales Tax Tribunal from an ex parte final order of the first appellate authority. This withdrawal by the advocate was on the basis of his understanding that an earlier appeal from the interim order of the first appellate authority directing deposit had been partly allowed by reducing the deposit of tax from Rs. 10 lacs to Rs. 50,000 by the Sales Tax Tribunal would necessarily mean that the appeal before the first appellate authority would be heard on merits.

Facts:

(a) By assessment order dated March 31, 2001 for the year 1997-98 the petitioner was assessed to Central sales tax (CST) requiring the petitioner to pay Rs. 30.50 lacs.

(b) Being aggrieved the petitioner filed a first appeal before the Deputy Commissioner of Sales Tax (Appeal)-(VI). On August 2, 2001 the appellate authority passed an order on the petitioner''s stay application requiring the petitioner to deposit of Rs. 10 lacs as a condition to stay the assessment order dated March 31, 2001.

(c) Being aggrieved by the order dated August 2, 2001, of the Deputy Commissioner of Sales Tax (Appeal), the petitioner preferred a second appeal to the Sales Tax Tribunal being Appeal No. 1579 of 2001.

(d) In the meantime, the first appeal was finally disposed of by the Deputy Commissioner of Sales Tax (Appeal) by passing an ex parte order dated August 30, 2001, while refusing the petitioner''s request for adjournment. Being aggrieved by the order dated August 30, 2001, the petitioner filed a second appeal before the Sales Tax Tribunal being Appeal No. 725 of 2002.

(e) On June 29, 2005, the Sales Tax Tribunal disposed of the Appeal No. 1579 of 2001 (deposit order) by reducing the deposit to Rs. 50,000 and remanded the issue to the first appellate authority, viz., the Deputy Commissioner of Sales Tax (Appeal) with directions to dispose of the appeal on merits as under:

Mr. Kabra, learned advocate for the appellant along with Mr. D.M. Thorat, learned Assistant Commissioner (Legal) for the Revenue, appeared before me. Mr. Kabra produced copy of the challan for part payment made of Rs. 50,000 to this Tribunal. The Revenue confirmed the compliance of part payment. Thereafter, Mr. Kabra and Mr. Thorat requested to remand the matter to the Deputy Commissioner (Appeal) for hearing on the merits. In view of the request from both sides and after taking into consideration merits of the matter, I found no reason to disagree with both the parties. Hence, the order.

ORDER

Second Appeal No. 1579 of 2001 is partly allowed. The appellant has made part payment as per order of this Tribunal and hereby the matter is remanded to the Deputy Commissioner of Sales Tax (Appeal) VI, Mumbai City Division, Mumbai, to hear Appeal No. DC/APP-VI-CA/93/2001-02 on merits and dispose of the matter.

(f) Thereafter while waiting for a notice of hearing from the Deputy Commissioner of Sales Tax (Appeal) VI consequent to above order dated June 29, 2005 in Appeal No. 1579 of 2001, the appeal being Appeal No. 725 of 2002 against the final order came up for hearing before the Sales Tax Tribunal on November 30, 2005. At the hearing on September 30, 2005 the petitioner''s advocate was possibly of the view that as Appeal No. 1579 of 2001 is partly allowed by order dated June 29, 2005 by way of remand to decide the issue on the merits, no further orders were necessary in Appeal No. 725 of 2002. Consequently by order dated November 30, 2005, the Appeal No. 725 of 2002 was disposed of as withdrawn.

(g) Thereafter when the appellant approached by Deputy Commissioner of Sales Tax (Appeals) for hearing of the appeal on merits it was informed that he had become functus officio. Therefore unless the order dated August 30, 2001 passed by the Deputy Commissioner of Sales Tax (Appeal) was set aside, no hearing on merits could be granted.

(h) In view of the above, the petitioner filed a restoration Application No. 5 of 2006 in Appeal No. 725 of 2002 before the Sales Tax Tribunal seeking the restoration of its Appeal No. 725 of 2002. However, by order dated September 7, 2006, the restoration application was dismissed as being beyond the period prescribed under rule 61 of the Bombay Sales Tax Rules and even otherwise holding that the exercise of its inherent powers was not justified.

(i) Thereafter, the appellant filed one more second appeal with Sales Tax Tribunal being Second Appeal No. 241 of 2007 against the ex parte final order dated August 30, 2001 passed by the Deputy Commissioner of Sales Tax (Appeal). The Sales Tax Tribunal by order dated January 4, 2010 dismissed the appeal on the ground that it was not maintainable as an appeal being Appeal No. 725 of 2002 against the order dated August 30, 2001 was already disposed of on November 30, 2005.

2. It is in the above facts that Mr. C.B. Thakkar, the learned counsel for the petitioner, submits that injustice has been caused to the petitioner in view of misunderstanding on the part of its lawyer. All that the petitioner seeks is an opportunity to present its case on merits before the second appellate authority against the ex parte order dated August 30, 2001 passed by the first appellate authority, viz., Deputy Commissioner of Sales Tax (Appeals).

3. As against the above Mrs. Uma Palsuledesai, learned counsel for the Revenue, objects to the grant of any relief to the petitioner. It is her submission that when the appeal being Appeal No. 725 of 2002 against the final order dated August 30, 2001 was withdrawn the petitioners were aware of the final order having been passed against them. Further, even the restoration application was filed beyond the period of limitation as provided in the Bombay Sales Tax Rules. In the circumstances there is no reason to entertain the petition.

4. We have considered the submissions. From the facts narrated hereinabove it is crystal clear that Appeal No. 725 of 2002 (from Final Order dated August 30, 2001) was withdrawn by the advocate of the petitioner on account of misunderstanding. This misunderstanding was not without any basis. In fact the Tribunal in its order dated June 29, 2005 in Appeal No. 1579 of 2001 (deposit order dated August 2, 2001) has at the instance of the joint request of the Revenue and the petitioner remanded the matter to the Deputy Commissioner of Sales Tax (Appeal) to decide the appeal on merits. The facts that there is a difference in an appeal from an interim order and an appeal from final order are intricate matters which could not normally be understood by non-lawyers. In these circumstances no fault can be attributed to the petitioner for having failed to ensure that Appeal No. 725 of 2002 is not withdrawn. In these circumstances, it may not be fair for a litigant to suffer on account of lapses on the part of its advocate.

5. It is not necessary to discuss any further details but the fact remains that the petitioner''s Second Appeal No. 725 of 2002 was withdrawn on November 30, 2005. In short, the appellant''s Second Appeal No. 725 of 2002 against the Final Order dated August 30, 2001 of the Deputy Commissioner of Sales Tax (Appeal) was never heard on merits. Hence, without going into any further details writ petition is allowed and the order dated November 30, 2005 of the Sales Tax Tribunal disposing the Second Appeal No. 725 of 2002 as withdrawn is set aside. Similarly the order dated September 7, 2006 dismissing the restoration Application No. 5 of 2006 is also set aside. The Second Appeal No. 725 of 2002 is restored to the file of the Sales Tax Tribunal.

6. The above order is passed in view of the undertaking given by the learned counsel for the petitioner that according to the petitioner balance tax dues payable by the petitioner is Rs. 88,421 with interest of Rs. 99,663 aggregating to an amount of Rs. 1,88,084 would be paid by them. Learned counsel undertakes on behalf of the petitioner that the petitioner will pay an amount of Rs. 2,00,000 to the Sales Tax Department within three months from today towards its tax liability and interest without prejudice to the rights and contentions of the parties. The amount shall he paid in two equal installments of Rs. 1 lacs each. The first installment will be paid on or before November 10, 2013 and the second installment will be paid on or before December 10, 2013. It is directed that Second Appeal No. 725 of 2002 would stand revived only after the petitioner deposits the aforesaid amount of Rs. 2 lacs with the Sales Tax Department. The petition is allowed in the above terms with no order as to costs.