(2014) 02 GUJ CK 0093

In the Gujarat High Court

Case No : Tax Appeal No. 68 of 2014 and Civil Application No. 56 of 2014

Shiva Industrial Security Agency (Gujarat) Pvt. Ltd. APPELLANT

Vs

Commissioner of Central Excise RESPONDENT

Date of Decision : 26-02-2014

Acts Referred:

Citation : (2014) 73 VST 276

Hon'ble Judges : Sonia Gokani, J;Akil Abdul Hamid Kureshi, J

Bench : Division Bench

Advocate : Maulik R. Shah, Advocate for the Appellant; Gaurang H. Bhatt, Advocate for the Respondent

Judgement

@

Akil Abdul Hamid Kureshi, J.—The appellant has challenged the orders of the Customs, Excise and Service Tax Appellate Tribunal (hereinafter referred to as "the Tribunal") requiring the appellant to deposit a sum of Rs. 72 lakh by way of pre-deposit, subject to which the remaining demands pending the appeal would be stayed. The Tribunal passed such an order on stay petition by the present appellant on October 1, 2013. The appellant preferred rectification application contending that in quantifying such amount of Rs. 72 lakhs, the Tribunal had committed an arithmetical error. Such application was dismissed by further order passed by the Tribunal on December 12, 2013. Hence, this appeal. The learned senior counsel Shri Deven Parikh for the appellant submitted that contrary to what is recorded by the Tribunal in the impugned orders, the appellant had not recovered the service tax at the rate of 12.36 per cent, but had recovered at the rate of 10.30 per cent, for the assessment years 2009-10 and 2010-11, which are under consideration. This is the principal grievance of the appellant.

2. Having heard the learned counsel for the parties, we notice that there is prima facie evidence to suggest that the appellant recovered service tax at the rate of 10.30 per cent, and not at the rate of 12.36 per cent from the customers. They

also disputed service tax liability at the said higher rate. Under the circumstances, the undisputed rate of duty, which was actually collected by the appellant from the customers, was 10.30 per cent Taking into account such figure, the principal liability of tax which cannot be disputed by the appellant comes to Rs. 19 lakh. Out of total tax demand of Rs. 72 lakh, this would leave a disputed figure of Rs. 53 lakh. We are of the opinion that by way of pre-deposit, the appellant should be made to deposit the entire undisputed amount, which in the present case has been recovered by the appellant from the customers and 25 per cent of the disputed tax demand. Under the circumstances, the appellant shall deposit a sum of Rs. 32 lakhs before the authorities by March 15, 2014. Upon which the remaining demand of tax, interest and penalty shall remain stayed and the appeal shall be heard by the Tribunal on merits. The appeal and civil application stand disposed of accordingly. All the observations made in this order are purely prima facie for dealing with the interim stage of pre-deposit and the Tribunal shall decide all such contentions unmindful of such observations.