(2015) 04 GUJ CK 0009

In the Gujarat High Court

Case No : Tax Appeal No. 310 of 2015 with Civil Application (OJ) No. 372 of 2015 in Tax Appeal No. 310 of 2015 and Tax Appeal No. 311 of 2015 with Civil Application (OJ) No. 373 of 2015 in Tax Appeal No. 311 of 2015

State of Gujarat APPELLANT

Vs

Sanyo Cera Tiles Pvt. Ltd. RESPONDENT

Date of Decision : 28-04-2015

Acts Referred:

Citation : (2015) 83 VST 210

Hon'ble Judges : M.R. Shah, J;S.H. Vora, J

Bench : Division Bench

Advocate : Vacha Desai, A.G.P., for the Appellant; Tushar P. Hemani and Vaibhavi K. Parikh, Advocates for the Respondent

Judgement

M.R. Shah, J.

1. Feeling aggrieved and dissatisfied with the impugned common judgment and order passed by the learned Gujarat Value Added Tax Tribunal, Ahmedabad dated 23.10.2013 passed in Second Appeal Nos. 559 of 2012 and 560 of 2012 by which, the learned Tribunal has allowed the aforesaid appeals and has set aside the orders passed by the authorities below on the show cause notice issued by the Excise Department and has consequently, set aside the demand raised as a result thereof, the appellant-State of Gujarat, through the Commissioner of Commercial Tax, has preferred the present tax appeals with the following proposed questions of law:-

"(1) Whether the Hon''ble Tribunal has erred in deciding the appeal on merits despite the fact that the first appellate authority dismissed the appeal for failure to deposit the pre-deposit?

(2) Whether the Hon''ble Tribunal erred in holding that the assessment orders are without application of mind and without appreciating investigating the

evidence?

(3) Whether the Hon''ble Tribunal erred in quashing the reassessment order instead of remanding the assessment back to the file of the assessing officer?

(4) Whether the Hon''ble Tribunal erred in deleting the levy of penalty under Section 34(7) and 34(12)?

(5) Whether the Hon''ble Tribunal erred in deleting the interest?"

2. Though the number of questions are raised/proposed, for the reasons recorded hereinafter, we propose to remand the matters to the first Appellate Authority to consider the appeals in accordance with law and on merits without insisting for pre-deposit. We restrict the present appeals to the proposed question No. 1 only. Hence, both these appeals are admitted to consider the following substantial question of law:-

"Whether the Hon''ble Tribunal has erred in deciding the appeal on merits despite the fact that the first appellate authority dismissed the appeal for failure to deposit the pre-deposit?"

3. Ms. Vacha Desai, learned A.G.P. appearing on behalf of the appellant has heavily relied upon the catena of decisions of this Court and the latest decision of the Division Bench of this Court in the case of State of Gujarat v. City Tiles Limited dated 09.02.2015 rendered in Tax Appeal No. 1315 of 2014 and allied matters in support of her submission that the learned Tribunal has materially erred in entering into the merits of the case and deciding the appeals on merits, when the appeals before the learned Tribunal were against the order passed by the first Appellate Authority dismissing the appeals on the ground of non-deposit of the amount of pre-deposit.

3.1. Ms. Vacha Desai, learned A.G.P. has requested to remand the matters to the adjudicating authority and not to remand the matters to the first Appellate Authority by submitting that if ultimately, it is found and held that the adjudicating authority raised demand solely relying upon the notice issued by the Excise Department and without holding any inquiry, in that case, the matters are required to be remanded to the adjudicating authority to pass appropriate order afresh in accordance with law and on merits and after holding necessary inquiry on the basis of the notice issued by the Excise Department.

3.2. Ms. Vaibhavi Parikh, learned advocate appearing for the respondent has vehemently opposed the request made by Ms. Vacha Desai, learned A.G.P. to remand the matters to the adjudicating authority. It is submitted that after the matters were remanded by the Division Bench of this Court vide judgment and order in the case of City Tiles Limited (supra), the learned Tribunal vide order dated 27.03.2015 has, in fact, remanded the matters to the first Appellate Authority directing the first Appellate Authority to decide the appeals on merits. However, she has fairly conceded that in light of the catena of decisions of this Court and even the latest decision of the Division Bench of this Court in the case of City Tiles Limited (supra), when the appeals before the learned Tribunal were against the orders passed by the first Appellate Authority dismissing the appeals on the ground of non-deposit of the amount of pre-deposit, the learned Tribunal could not have entered into the merits of the case and could not have decided the appeals on merits.

4. Heard the learned advocates appearing for the respective parties at length.

5. By the impugned common judgment and order, the learned Tribunal has decided the appeals on merits and has quashed and set aside the orders passed by the adjudicating authority and the demand raised on the ground that without holding any further inquiry and solely relying upon and/or considering the notice issued by the Excise Department, the Assessing Officer passed the orders which was not permissible and consequently, the learned Tribunal has set aside the assessment orders.

5.1. However, it is required to be noted that the appeals before the learned Tribunal were against the orders passed by the first Appellate Authority dismissing the appeals on the ground of non-deposit of the amount of pre-deposit only and not on the merits of the case.

6. Under the circumstances and in view of the catena of decisions of this Court and the subsequent recent decision of the Division Bench of this Court in the case of City Tiles Limited (supra), it was impermissible for the learned Tribunal to decide the appeals on merits when the appeals before the learned Tribunal were against the orders passed by the first Appellate Authority dismissing the appeals on the ground of non-deposit of the amount of pre-deposit.

7. Under the circumstances, as such, the matters are required to be remanded to the learned Tribunal directing the learned Tribunal to consider the issue with respect to pre-deposit and/or orders passed by the first Appellate Authority dismissing the appeals on the ground of non-deposit of the amount of pre-deposit only. However, considering the fact that even subsequently, when on remand by the Division Bench of this Court in the case of City Tiles Limited (supra), the learned Tribunal has remanded the matters to the first Appellate Authority to decide the appeals on merits without insisting for pre-deposit, instead of remanding the matter to the learned Tribunal, we propose to remand the matters to the first Appellate Authority.

8. Now, so far as the request made by Ms. Vacha Desai, learned A.G.P. to remand the matters to the adjudicating authority by submitting that if it is held by the first Appellate Authority that the Assessing Officer passed the assessment orders and/or raised the demand without holding any further inquiry and solely relying upon the notice issued by the Excise Department, in that case, the first Appellate Authority is required to remand the matters to the Assessing Officer for passing the fresh order after holding necessary inquiry is concerned, the aforesaid cannot be accepted. It is required to be noted that we are quashing and setting aside the order passed by the learned Tribunal on the ground that as

the first Appellate Authority has dismissed the appeals on the ground of non-deposit of the amount of pre-deposit only, the learned Tribunal ought not to have considered the appeals on merits. Applying the same logic, it will not be appropriate and/or proper for this Court to consider the issue on merits. The aforesaid is required to be considered by the first Appellate Authority while deciding the appeals on merits and while passing appropriate order. It goes without saying that the first Appellate Authority will consider the same argument and deal with the same in accordance with law and on merits.

9. In view of the above and for the reasons stated above, both the appeals succeed. The impugned common judgment and order dated 23.10.2013 passed by the learned Tribunal in Second Appeal Nos. 559 of 2012 and 560 of 2012 is hereby quashed and set aside. The matters are remanded to the file of the first Appellate Authority with a direction to the first Appellate Authority to decide and dispose of the appeals in accordance with law and on merits and in the facts and circumstances of the case, without insisting for pre-deposit. On remand, the first Appellate Authority is directed to finally decide and dispose of the appeals in accordance with law and on merits and in light of the observations made hereinabove, at the earliest and preferably within a period of three months from today. The respondent-dealer is hereby directed to cooperate the first Appellate Authority in early disposal of the appeals within the stipulated time as stated hereinabove.

10. With this, both the appeals are allowed to the aforesaid extent. No order as to costs.

11. In view of disposal of the main appeals, OJCA Nos. 372 and 373 of 2015 also stand disposed of.