(2013) 11 GUJ CK 0003

In the Gujarat High Court

Case No : Tax Appeal No''s. 938, 939 and 941 of 2013 and Civil Application No''s. 640 and 643 of 201

State of Gujarat APPELLANT

Vs

Shakti Containers RESPONDENT

Date of Decision : 29-11-2013

Acts Referred:

Citation : (2014) 43 GST 326 : (2014) 69 VST 298

Hon'ble Judges : R.P. Dholaria, J;M.R. Shah, J

Bench : Division Bench

Advocate : Jaymin Gandhi, for the Appellant; Jeevan R. Vasave and M.A. Bukhari, for the Respondent

Judgement

M.R. Shah, J.—All these Tax Appeals have been preferred by the State of Gujarat u/s 78 of the Gujarat Value Added Tax Act, 2003 (hereinafter referred to as the "Act") challenging the impugned common judgment and order dated 09.03.2012 passed by the learned Gujarat Value Added Tax Tribunal, Ahmedabad (hereinafter referred to as the "Appellate Tribunal") passed in Revision Application Nos. 109 to 112 of 2010. A preliminary objection is raised by Shri Vasave, learned advocate for respondent with respect to maintainability of the present appeal u/s 70 of the Act before this Court against the impugned judgment and order passed by the Appellate Tribunal passed in Revision Application Nos. 109 to 112 of 2010. Shri Vasave, learned advocate for the respondent has vehemently submitted that against the impugned judgment and order passed by the Tribunal passed in Revision Applications, appeal u/s 78 of the Act shall not be maintainable. It is submitted that u/s 78 of the Act the appeal shall lie to the High Court from the every order passed in Appeal by the Tribunal, if the High Court is satisfied that the case-involves a substantial question of law. It is submitted that in the present case impugned judgment and order is passed by the Tribunal in the revision applications in exercise of powers u/s 74 of the Act and therefore, against the said judgment and order passed in revision applications, appeal u/s 78 of the Act shall not be maintainable before this Court. Making above submissions, it is requested to dismiss the present appeals as not maintainable.

2. Shri Gandhi, learned Assistant Government Pleader appearing on behalf of the State Government has submitted that as such revision applications preferred by the respondent before the learned Appellate Tribunal was in the form of appeal and therefore, considering Section 73(1) of the Act, it is submitted that despite the fact that nomenclature given by the Tribunal is revision application, it would be an appeal before the Tribunal and therefore, the appeal before this Court u/s 78 of the Act would be maintainable.

3. Heard the learned advocates for the respective parties on the aforesaid preliminary objection raised on behalf of the respondent, with respect to maintainability of the present appeal before this Court u/s 78 of the Act. At the outset, it is required to be noted that what was challenged before the learned Tribunal was the order passed by the Commissioner in exercise of suo motu revisional powers u/s 75(1)(a) of the Act. The Commissioner did not exercise the revisional powers on any application and as stated above exercised the suo motu revisional powers. Under the circumstances considering Section 75(1)(b) of the Act against the order passed by the Commissioner passed in exercise of suo motu revisional powers only revision application before the learned Appellate Tribunal was maintainable and therefore, as such the learned Appellate Tribunal rightly entertained the revision applications and has rightly passed the impugned judgment and order in exercise of the revisional jurisdiction. That being so considering Section 78(1) of the Act and as the impugned order passed by the learned Appellate Tribunal is passed in revision applications and not in appeal and therefore, Tax Appeal before this Court u/s 78(1) of the Act would not be maintainable. Considering Section 78(1) of the Act an appeal shall lie to the High Court from every order passed in Appeal by the Tribunal. In view of the above, it is held that the present appeals preferred u/s 78(1) of the Act would not be maintainable.

4. Under the circumstances, all these appeals are dismissed as disposed of as not maintainable. However, it is observed that it will be open for the appellants to prefer Special Civil Application under Article 226/227 of the Constitution of India, which may be considered in accordance with law and on merits. With this, present appeals are disposed of as not maintainable. In view of the disposal of main Tax Appeals, OJCA Nos. 640 of 2013 to 643 of 2013 also deserves to be disposed of and are accordingly disposed of.