

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5704 OF 2014

Maharashtra State Road Transport Corporation. ... Petitioner.

V/s.

Commissioner of Central Service, Kolhapur. ... Respondents.

Mr.Gopal Krishna Shivaram Hegde with Mr.C.M.Lokesh for the petitioner.

Mr.Pradeep S. Jetly with Mr.Jitendra B. Mishra for the respondent

CORAM : A.S.OKA AND A.K.MENON, JJ.

DATE : 13th November 2017.

PC.:

Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent. Considering the narrow question involved in the writ petition, the same is forthwith taken up for final hearing.

2. A show-cause-notice was issued to the petitioner-Maharashtra State Road Transport Corporation making a demand for service tax. The demand was confirmed by the Additional Commissioner. Being aggrieved by the order of confirmation of demand, a statutory appeal was preferred by the petitioner before the Commissioner of Appeals. The said appeal was dismissed on the ground that the same was time-barred.

3. Thereafter, an application for rectification was filed by the petitioner before the Adjudicating Authority which was rejected. Being aggrieved by the order passed on the rectification application, an appeal was preferred before the Commissioner (Appeals). The said appeal was dismissed by the Commissioner (Appeals). Being aggrieved by the said order, the petitioner preferred an appeal before the Customs, Excise and Service Tax Appellate Tribunal (for short "Appellate Tribunal"), West Zonal Bench at Mumbai. An application for stay was made by the petitioner which has been dismissed by the impugned order dated 1st October 2013. Not only that the stay application was dismissed, but while deciding the stay application, even the appeal was dismissed by the Appellate Tribunal on the ground that the same did not have merit.

4. The learned counsel appearing for the petitioner submits that while deciding the application for stay, at the highest, the Appellate Tribunal could have gone into *prima facie* case made out in the appeal preferred by the petitioner, but the appeal could not have been finally decided on merits. He pointed out averments in the petition that the appeals preferred by Ratnagiri and Sindhudurg Divisions of the petitioner against the similar orders passed by the Adjudicating Authority have been allowed by holding that there cannot be any demand made from the petitioner.

5. The learned counsel appearing for the respondent supported the impugned order by pointing out that the appeal preferred by the petitioner before the Commissioner (Appeals) was confined to the order

passed on the rectification application filed before the Adjudicating Authority. He submitted that the order of the Commissioner (Appeals) dismissing the appeal against the order-in-original passed by the Adjudicating Authority was never challenged by the petitioner and, therefore, the view taken cannot be faulted.

6. We have given careful consideration to the submissions. The first paragraph of the impugned judgment and order shows that what was heard by the Appellate Tribunal was an application for stay made by the petitioner in the pending appeal. While deciding the application for stay, the Appellate Tribunal always could have gone into the question whether *prima facie* there is any merit in the appeal. However, from the impugned order, we find that the Appellate Tribunal has recorded a final finding on merits of the appeal by holding that the appeal was devoid of any merit. In fact, the Appellate Tribunal proceeded to dismiss the appeal and, consequently, the stay application was dismissed.

7. The approach of the Appellate Tribunal is completely erroneous. What was heard before the Appellate Tribunal was the application for stay. There was no occasion for the Appellate Tribunal to go into the merits and decide the appeal itself by holding that it was devoid of any merits.

8. Therefore, the impugned order cannot be sustained and by setting aside the same, the appeal and the stay application will have to be restored to the file of the Tribunal.

9. Accordingly, we pass the following order:

ORDER

(i) The impugned judgment and order dated 1st October 2013 is hereby quashed and set aside and the said appeal bearing No.ST/86362/13-Mum and application made therein are restored to the file of the Customs, Excise and Service Tax Appellate Tribunal, West Zonal Bench at Mumbai;

(ii) Considering the fact that the appeal is of year 2013, the Appellate Tribunal will give necessary priority to the hearing of the stay application and the same shall be decided as expeditiously as possible.;

(iii) All contentions on merits of the stay application as well as appeal are expressly kept open;

(iv) Rule is made absolute in the above terms with no order as to costs.

(A.K.MENON, J.)

(A.S.OKA, J.)