



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 844 OF 2020
WITH
CENTRAL EXCISE APPEAL NO.1 OF 2020

HDFC Bank Ltd.)
A Banking Company incorporated under the)
Banking Regulation Act, 1949 and having)
its registered office at HDFC Bank House,)
Senapati Bapat Marg, Lower Parel (West))
Mumbai 400 013.) ..Petitioner/Appellant

Versus

Commissioner of Central Excise, Thane-II)
having his office at 3rd floor, Navprabhat)
Chambers, Ranade Road, Dadar (West),)
Mumbai 400 028.) ..Respondent

Mr V Sridharan, Senior Advocate a/w Mr Vinay Jain i/b Mr Sriram Sridharan for Petitioner / Appellant.

Mr Karan Adik a/w Ms Maya Majumdar for Respondent in WP/844/2020.

Mr Jitendra B Mishra a/w Mr Saket R Ketkar for Respondent No 1 in CEXA/1/2020.

CORAM : K. R. SHRIRAM &
JITENDRA JAIN, JJ.

DATED : 10th JUNE 2024

ORAL JUDGMENT (PER K. R. SHRIRAM J.)

1 Since the pleadings are completed, we decided to dispose the petition at the admission stage itself. Therefore, Rule. Rule made returnable forthwith and heard.

2 Petitioner is impugning the order dated 5th December 2019, which was passed by the Customs Excise and Service Tax Appellate Tribunal Mumbai in Service Tax Miscellaneous Application (ROM) No.86163 of 2019

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by which, the application that was made by petitioner under Section 35C(2) of the Central Excise Act, 1944 came to be rejected.

3 The said application had been filed by petitioner being aggrieved by order dated 13th September 2019 passed by the Tribunal. Various grounds were raised in the application, the primary one being that petitioner's case is squarely covered by the judgment given by a co-ordinate bench of the Hon'ble Chennai Tribunal in the case of *IndusInd Bank Ltd. Vs. Commissioner of Service Tax, Chennai*¹ where the Tribunal while allowing the appeal held that the discount received by bank from automobile dealers cannot be treated as a consideration for service. It was submitted that petitioner's case will be squarely covered by *IndusInd Bank Ltd.* (Supra) where the Tribunal held that no service provider receiver relationship between the bank and vehicle dealer and therefore, the bank cannot be said to have provided any service to the vehicle dealer. According to petitioner, though this decision of the Chennai Tribunal was brought to the notice of the Hon'ble Tribunal during the course of personal hearing as well as by way of additional written submissions, there is only reference in the appeal order wherein merely arguments put forth by counsel have been briefly reproduced and the Tribunal has not provided any observation, findings or comments on the aforesaid decision. According to petitioner, this constitutes a mistake apparent from record.

4 While rejecting the application, the Tribunal not only has gone into

1 2019 (25) G.S.T.L. 220(Tri-Chennai)

the merits of the case but the stand of the Tribunal was irrelevant facts and arguments need not be included in the order, and those which are not relevant for arriving at the decision should be avoided and also decision need not be loaded with unnecessary information and legal knowledge of the author of the judgment. According to the Tribunal the issue was considered by the various benches of tribunal in various decisions rendered much prior to the decision of *IndusInd Bank Ltd.* (Supra) and not a single bench has taken a contrary view. At the same time, the decision in case of *IndusInd Bank Ltd.* (Supra) was rendered even without taking note of any of the decisions rendered earlier by the benches of co-equal strength and such a decision cannot be but a decision rendered per incuriam. What is quite glaring is that the Tribunal has not bothered to list which are those matters prior to *IndusInd Bank Ltd.* (Supra), where a contrary view has been taken and which are those matters which have not been considered in the *IndusInd Bank Ltd.* (Supra). In our view, it is nothing but a bald observation made without details. Apart from mere assertion, there is no mention in the impugned order of any decision of the Appellate Tribunal, which has taken a contrary view.

5 It is settled law that the decision of judicial authority should give proper reasons for arriving at a particular conclusion. The Apex Court in *Uttar Pradesh State Road Transport Corporation Vs. Jagdish Gupta* ² has stated reasons introduce clarity in an order. The order howsoever brief

2 (2009) 12 SCC 609

should indicate an application of mind, all the more when the same could be further challenged.

6 In the circumstances, in our view, the impugned order passed by the Tribunal on 5th December 2019 has to be quashed and set aside. The matter is remanded to the Tribunal for denovo consideration of MA No.ST/ROM/86163/2019. Therefore, Rule made absolute in terms of prayer clause (a) which reads as under:

“(a) that this Hon'ble Court be pleased to issue a Writ of mandamus / Certiorari or a writ in the nature of Certiorari or any other writ, order or direction under Article 226 of the Constitution of India calling for the records pertaining to the petitioners case and after going into the validity and legality thereof to quash and set aside the impugned Order No. M/86146/2019 dated 05.12.2019 (Exhibit A hereto) passed by said Appellate tribunal, and allow the Application for Rectification of Mistake no. ST/ROM/86163/2019 dated 23.9.2019 filed by petitioner in full.”

7 All rights and contentions of the parties are kept open. Since the matter is of 2019, we request the Tribunal to dispose the Miscellaneous Application as early as possible subject to its roster, preferably on or before 31st October 2024.

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8 In view of the above order, Mr. Sridharan requests leave to withdraw the appeal with liberty to file fresh appeal, in case the need arises.

9 Appeal dismissed as withdrawn with liberty as prayed for.

(JITENDRA JAIN, J.)

(K. R. SHRIRAM, J.)

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