(2014) 12 P&H CK 0007

High Court Of Punjab And Haryana At Chandigarh

Case No: C.E.A. Nos. 72-73 of 2014

Rajesh Kumar Gupta		APPELLANT
	Vs	
Commissioner of C. Ex., Chandigarh		RESPONDENT

Date of Decision: Dec. 18, 2014

Citation: (2015) 322 ELT 669

Hon'ble Judges: Rajive Bhalla, J ; B.S. Walia, J

Bench: Division Bench

Advocate: Jagmohan Bansal, Advocate for the Appellant; Sukhdev Sharma, Advocate for the Respondent;

Judgement

@JUDGMENTTAG-ORDER

Rajive Bhalla, J.

1. By way of this order, we shall decide CEA-72-2014 and CEA-73-2014 as they relate to the same parties and require answer to the same question of law namely whether the Customs, Excise & Service Tax Appellate Tribunal (hereinafter referred to as the ''Tribunal''), is empowered while exercising power under the Central Excise Act, 1944 to set aside an ex-parte order? Counsel for the appellant submits that a show cause notice was served upon the appellant relating to Cenvat credit. The assessing authority confirmed the demand vide order dated 17-5-2005. The appellant filed an appeal which was allowed by the Commissioner (Appeals) on 23-8-2005. Aggrieved by this order, the Revenue filed an appeal before the Tribunal. The Tribunal vide order dated 24-7-2013, passed an ex-parte order, accepting the appeal, setting aside the order passed by the appellate authority and restoring the order passed by the adjudicating authority. The appellant thereafter filed an application for recalling of the ex-parte order which was dismissed on 8-8-2014, by holding as follows:-

"2.....But there is nothing on record to show that Tribunal deprived the respondents from the process of justice. Recalling the order shall be amounting to review the order dated 24-7-2013 without any rectifiable mistake apparent from record. Law is well settled that extensive enquiry is unwarranted to rectify a mistake and Tribunal has no power to totally recall an order passed on merit."

2. Counsel for the appellant submits that the Tribunal has erred in construing an application for recalling of an ex-parte order as an application for review. The power to review an order and the power to recall an ex-parte order are different. An adjudicating forum whether judicial or quasi-judicial has inherent power to recall an ex-parte order. The Tribunal having confused the matter and construed the application for recalling of the ex-parte order as an application for review, the appeal may be allowed, the impugned order may be set aside and the matter may be remitted to the Tribunal for adjudication afresh.

3. Counsel for the Revenue while accepting that a Tribunal has inherent power to recall/set aside an ex-parte order submits that as such an order in essence partakes the nature of an order to review and, therefore, there is no error in the order passed by the Tribunal. It is further submitted that as no one appeared on behalf of the respondents, the Tribunal was well within its jurisdiction to pass an ex-parte order.

4. We have heard counsel for the parties and perused the impugned order.

5. The Tribunal allowed the appeal filed by the Revenue by recording that no-one is present on behalf of the appellant. The appellant''s application for recalling of the ex-parte order was dismissed as not maintainable by holding that the application is for review and as no ground is made out for review. An adjudicatory forum whether judicial or quasi-judicial has inherent power to recall an ex-parte order as distinct from the power of review. The power to recall an ex-parte order flows from the power to ensure that justice is done. The Tribunal, however, appears to have construed its power to recall an ex-parte order as a power of review. We would, therefore, emphasise that while exercising power to recall an ex-parte order, a Tribunal does not exercise the power of review but a power to undo a wrong, provided sufficient cause is shown. A perusal of order allowing the appeal against the appellant reveals that counsel for the appellant was not present. The Tribunal instead of passing an order initiating ex-parte proceedings, chose to forthwith decide the appeal and set aside the order passed in favour of the appellant. While appreciating the endeavour of the Tribunal to dispose of appeals expeditiously, it needs to be emphasised that interest of justice should not be jeopardised and that Courts and Tribunals are respected for their ability to adjudicate matters on merits. A perusal of the application for recalling the ex-parte order reveals that adequate explanation was furnished for failure of the counsel to put in appearance. This apart, negligence on the part of a counsel should not visit a party with consequences that involve monetary liability. We are, therefore, satisfied that the impugned orders are contrary to law. Consequently, the appeals are allowed, the impugned orders are set aside and the matter is remitted to the Customs, Excise & Service Tax Appellate Tribunal, New Delhi, for adjudication afresh within three

months of parties putting in appearance before it on 9-2-2015.