
(2010) 12 JH CK 0003

In the Jharkhand High Court

Case No : Writ Petition (T) No. 4552 of 2003

Central Coalfields Limited

APPELLANT

Vs

Central Board of Excise and Customs and Others

RESPONDENT

Date of Decision : 14-12-2010

Acts Referred:

Finance Act, 2000 — Section 11, 116, 117, 68(1), 69
Service Tax Rules, 1994 — Rule 1(1), 2(1)

Citation : (2010) 12 JH CK 0003

Hon'ble Judges : Bhagwati Prasad, C.J;D.N. Patel, J

Bench : Division Bench

Final Decision : Allowed

Judgement

D.N. Patel, J.—The present writ petition has been preferred seeking a writ of mandamus upon the Respondents that the Respondents have no power, jurisdiction and authority to demand interest upon the amount of Service Tax on the Goods Transport Operators Service for the period running from 16th November, 1997 to 1st June, 1998 and thereby, has prayed for quelling the letter dated 10/11th January, 2003, issued by die Deputy Commissioner, Central Excise, Ranchi, which is at Annexure 9 to the memo of petition.

2. We have heard learned Counsel for both die sides and looking to the facts and circumstances of the" case, it appears that the present Petitioner is a "Receiver of the Transport Services". Initially, the service tax was to be paid by the Transport Service Providers. Subsequently, this liability was omitted by the Central Government and, thereafter, the liability to make payment of service tax was fastened upon the Transport Service Receivers. This liability was introduced by Finance Act, 2000, amending the Service Tax Rules contained in Finance Act, 1994 by amendment dated 12th May, 2000.

3. By virtue of this validating Act, certain actions taken under the Service Tax Rules, inter alia, revalidated the provisions of Service Tax on Goods Transport Operators payable from 16th November, 1997 to 1st June, 1998 and Service

Availers were asked to pay Service tax for the period running from 16th November, 1997 to 1st June, 1998.

4. It further appears that the present Petitioner has deposited the amount of Service Tax. The amount deposited by the Petitioner is Rs. 2,72,54,295.98 paise by different Challans on 16th March, 2002 and 12th April, 2002 in the State Bank of India, Ranchi, on account of the Service Tax, on the services rendered by Goods Transport Operators for the period running from 16th November, 1997 to 1st June, 1998. Balance of service tax i.e. Rs. 22,60,604.16 paise was deposited by the Petitioner on 8th October, 2002. Thus, the total amount deposited by the Petitioner by way of service tax on Goods Transport Operator Services is Rs. 2,95,14,899.21 paise.

5. It appears that by virtue of Section 116 of the Finance Act, 2000, in Section 68, in Sub-section (1) the following proviso has been inserted, which shall be deemed to have been inserted on and from 16th day of July, 1997:

Provided that-

(i) in relation to services provided by a clearing and forwarding agent, every person who engages a clearing and forwarding agent and by whom remuneration of commission (by whatever name called) is paid for such services to the said agent for the period commencing on and from the 16th day of July, 1997 and ending with the 16th day of October, 1998; or

(ii) in relation to services provided by goods transport operator, every person who pays or is liable to pay the freight either himself or through his agent for the transportation of goods by road in a goods carriage for the period commencing on and from the 16th day of November, 1997 and ending with the 2nd day of June, 1998,

shall be deemed always to have been a person liable to pay service tax, for such services provided to him, to the credit of the Central Government.

6. Section 71A has been inserted with retrospective effect on and from 16th day of July, 1997. The said Section 71A reads as under:

71A. Filing of return by certain customers.-

Notwithstanding anything contained in the provisions of Sections 69 and 70, the provisions thereof shall not apply to a person referred to in the proviso to Sub-section (1) of Section 68 for the filing of return in respect of service tax for the respective period and service specified therein and such person shall furnish return to the Central Excise Officer within six months from the day on which the Finance Bill, 2003 receives the assent of the President in the prescribed manner on the basis of the self assessment of the service tax and the provisions of Section 71 shall apply accordingly.

(Emphasis supplied)

7. On the basis of the aforesaid amendments, the Respondents are claiming payment of service tax from "Goods Transport Operators Services Receivers" i.e. from the Petitioner and as the Petitioner has made the payment belatedly, the Respondents are demanding interest on delayed payment, as per the letter at Annexure 9 to the memo of petition, which is dated 10/11th January, 2003.

8. It is vehemently contended by the learned Counsel for the Petitioner that the issue involved in this writ petition has already been decided by the Hon'ble Supreme Court in the case of Commissioner of Central Excise, Vadodara-I Vs. Gujarat Carbon and Industries Ltd., . It has been submitted vehemently by the learned Counsel for the Petitioner that as per Section 73(a) of the Finance Act, an Assessee who is liable to file return u/s 70, will be liable to make payment of service tax. The liability to file return is cast on the Assessee i.e Tupon Goods Transport Operator Services Receivers only u/s 71A, which was introduced in the Finance (sic) 2003 and, therefore, the notices issued for recovery of the service tax were quashed and set aside in the aforesaid decision. Section 117 of the Finance Act, 2000, which validates with retrospective effect the provisions of Sub-clause (xii) of clause (d) of Sub-rule (1) of Rule 1 of Service Tax Rules, 1994, was already referred in the aforesaid decision. Thus, the contention raised by the learned Counsel for the Petitioner that in spite of Section 11 of the Finance Act, 2000, the decision rendered by the Hon'ble Supreme Court that once liability to file return is cast on Assessee u/s 71A, which is introduced in the Finance Bill, 2003, the Petitioner is not liable for payment of service tax at all, but, as it has already paid the service tax, as stated hereinabove, by different Challans, no question of making payment of interest whatsoever arises.

9. We upheld this contention. There is force in the argument canvassed by the learned Counsel for the petitioner. In fact, the present case is covered by the decision delivered by the Hon'ble-Supreme Court in the aforesaid case.

10. The only contention raised by the learned Counsel for the Respondents is Section 117 of the Finance Act, 2000, which revalidates the action already taken by the Respondents. Section 117 of the Finance Act, 2000 reads as under:

117. Validation of certain action taken under Service Tax Rules.-

Notwithstanding anything contained in any judgment, decree or order of any Court, Tribunal or other authority, Sub-clauses (xii) and (xvii) of Clause (d) of Sub-rule (1) of Rule 2 of the Service Tax Rules, 1994 as they stood immediately before, the commencement of the Service Tax,(Amendment) Rules, 1998 shall be deemed to be valid and to have always been valid as if the said sub-clauses had been in force at all material times and accordingly:

(i) any action taken or anything done or purported to have been taken or done at any time during the period commencing on and from the 16th day of July, 1997 and ending with the day, the Finance Act, 2000 receives the assent of the President shall be deemed to be valid and always to have been valid for all purposes, as validly and effectively taken or done.

(ii) any service tax refunded in pursuance of any judgment, decree or order of any court striking down Sub-clauses (xii) and (xvii) of clause (d) of Sub-rule (1) of Rule 2 of the Service Tax Rules, 1994, before the date on which the Finance Act, 2000 receives the assent of the President shall be recoverable within a period of thirty days from the date on which the Finance Act, 2000 receives the assent of the President, and in the event of non-payment of such service tax refunded within the period, in addition to the amount of service tax recoverable, interest at the rate of twenty-four percent, per annum shall be payable, from the date immediately after the expiry of the said period of thirty days till the date of payment.

Explanation For the removal of doubts it is hereby declared that no act or omission on the part, of any person shall be punishable as an offence which would not have been so punishable if this section had not come into force.

11. Learned Counsel for the Respondents has also relied upon the decision rendered by the Hon'ble Supreme Court in the case of Gujarat Ambuja Cements Ltd. and Another Vs. Union of India (UOI) and Another, wherein, this Section was under challenge.

12. This contention is not accepted by this Court, mainly for the reason that Section 117 of the Finance Act, 2000 was also argued in the decision rendered by the Hon'ble Supreme Court in the case of Commissioner of Central Excise, Vadodra-I Vs. Gujarat Carbon and Industries Ltd., . Paragraph Nos. 5, 6, 7, 8 and 9 of the aforesaid decision reads as under:

5. The Tribunal referred to a decision in the case of 2004 (93) ECC 224 where under similar circumstances the show cause notice was issued. It was held that during the relevant period Section 73 takes in only the case of assesses who are liable to file return u/s 70. The liability to file return is cast on the assesses only u/s 71-A which was introduced in the Finance Bill, 2003. Thus, during the period in question no notice could have been issued u/s 73 for non filing of return u/s 70. According to the Tribunal, the service receiver was not required to file any return u/s 70 of the Finance Act, 1994 prior to 2003. The Tribunal accordingly quashed the order demanding service tax from the Respondents-service availers. Similar view has been expressed in the connected, cases.

6. According to learned Counsel for the revenue, the view of CESTAT is clearly unsustainable, because of retrospective operation of the provisions.

7. Learned Counsel for the Respondents on the other hand supported the respective judgments of the Tribunal.

8. It is to be noted that in an identical case in Commissioner of Central Excise, Meerut-II v. L.H. Sugar Factories Ltd. And Ors. 2005 (13) SCC 245, this Court agreed with similar conclusions of the Tribunal. In the said case, the conclusions of the Tribunal were as follows:

The above would show that even the amended Section 73 takes in only the case

of assesses who are liable 10 file return u/s 70. Admittedly, the liability to file return is cast on the Appellants only u/s 71 A. The class of persons who come u/s 71A is not brought under the net of Section 73. The above being the position show cause notices issued to the Appellants invoking Section 73 are not maintainable.

9. In view of what has been stated in L.H. Sugar's case (supra) we do not find any merit in the present appeals which are accordingly dismissed.

13. In view of the aforesaid decision, there was no liability to file return u/s 70 by the Petitioner for Goods Transport Operators Services received by the Petitioner for the period running from 16th November, 1997 to 1st July, 1998, as the Petitioner has already deposited the tax on 16th March, 2002, 12th April, 2002 and 8th October, 2002, total of which comes to Rs. 2,95,14,899.21 paise. There is, thus, no question of the Petitioner's liability to make payment of interest on the aforesaid amount whatsoever. We, therefore, quash and set aside the order passed by the Deputy Commissioner, Central Excise, Ranchi dated 10/11th January, 2003 at Annexure 9 to the memo of petition.

14. This writ petition is, accordingly, allowed and disposed of.