(2015) 04 DEL CK 0165

In the Delhi High Court

Case No : CEAC 9/2015, CM Appl. 3433-3434 and 4102 of 2015

Chaque Jour Outsourcing Solutions Private Limited APPELLANT

Vs

Commissioner of Service Tax and Others RESPONDENT

Date of Decision : 07-04-2015

Acts Referred:
Finance Act, 1994 — Section 67

Citation : (2015) 39 STR 423

Hon'ble Judges : S. Ravindra Bhat, J;R.K. Gauba, J

Bench : Division Bench

Advocate : Ruchir Bhatia, for the Appellant; Sonia Sharma, Sr. SC and Vijay Chandra Jha, Advocates for the Respondent

Judgement

1. Heard counsel for the parties.

2. The appellant contends that the order of the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) dated 16.12.2014 directing it to deposit 50% of the disputed amount working out to Rs. 7.02 crores is in the circumstances of the case untenable.

3. The brief facts of the case are that the appellant provides business auxiliary services to its clients on principal to principal basis. These services are termed as Business Auxiliary Support Services and Management, Maintenance and Repair Services. The appellant received a show cause notice dated 22.10.2010 proposing the inclusion of the reimbursement expenses as the value of the taxable services. The appellant resisted the proceedings but without any avail. The show cause notice was confirmed by the Order in Original dated 10.10.2012 and the demand for Rs. 14,04,69,188/- was made. An appeal was preferred to the CESTAT along with an application seeking waiver of pre-deposit. The CESTAT granted partial relief, in that, 50% of the demand was directed to be complied with and the balance waived, as a pre-condition for hearing of the appeal.

4. It is urged that the impugned order of the CESTAT is facially untenable.

Learned counsel relies upon the judgment of this Court reported as Intercontinental Consultants and Technorats (P.) Ltd. Vs. Union of India, (2013) 196 DLT 17 : (2013) 19 GSTR 462 : (2013) 38 STT 75 : (2013) 59 VST 487 which held Rule 5 (1) of the Service Tax (Determination of Value) Rules, 2006 to be ultra vires the parent statute i.e. Section 67 of the Finance Act, 1994. It is argued that the impugned show cause notice premised the demand on the application of Rule 5 (1) and in the circumstances CESTAT could not have insisted on a pre-deposit of a substantial amount.

5. Counsel for the Revenue resisted the appeal and contended that since the appellant has been afforded relief to the extent of 50% of the demand, no grievance can be made out. It was also urged that given the provisions of the Statute the appellant had to make the deposit and that there is no averment as to any irreparable harm by the appellant or that it was financially constrained in any manner.

6. This Court has considered the submissions. Intercontinental Consultants (supra) held that rule 5 (1) - which sought to include expenditure or costs incurred by the service provider in the course of providing taxable services in the value for the purpose of charging service tax - to be contrary to Section 67 of the Finance Act. That judgment was delivered on 30.11.2012. The Order in Original was made on 10.10.2012. It prima facie contains indications that the adjudicating authority premised the demand on the operation and validity of Rule 5 (1). Given these circumstances, the Court is of the opinion that the order of the CESTAT imposing a substantial burden as a condition for hearing of the appeal before it, cannot be sustained. The order to the extent it directs deposit of 50% of the impugned demand is consequentially set aside. The CESTAT is directed to hear the appeal on merits.

7. The appeal is accordingly allowed in the above terms.

