

(2015) 01 BOM CK 0271

In the Bombay High Court

Case No : Central Excise Appeal No. 19 of 2014

Commissioner of Central Excise

APPELLANT

Vs

Syntel International (P) Ltd.

RESPONDENT

Date of Decision : 12-01-2015

Acts Referred:

Finance Act, 1994 — Section 65

Citation : (2015) 39 STR 27

Hon'ble Judges : S.C. Dharmadhikari, J;S.P. Deshmukh, J

Bench : Division Bench

Advocate : Pradeep S. Jetly and Jitendra B. Mishra, for the Appellant; Bharat Raichandani, Mihir Deshmukh and Rajan Mishra instructed by Gaurav Agrawal, Advocates for the Respondent

Judgement

1. This appeal by the Revenue challenges the order passed on 2nd July, 2013 by the Customs Excise and Service Tax Appellate Tribunal. West Zonal (for short "CESTAT") in Appeal No. S.T./86927/13-Mumbai. The appellant before the Tribunal is the respondent to this appeal. An appeal was preferred by the said respondent/Assessee to challenge an order passed by the Adjudicating Authority, namely order in-original of the Commissioner of Central Excise Pune-I, dated 12th February, 2013.

2. The contention of the Assessee was that it is engaged in providing services under the category of Information and Technology Software Services in terms of clause "zzzze" of sub-section (105) of Section 65 of the Finance Act, 1994. Relying upon the agreement between the assessee and its clients/customers located outside India, the argument was that this work performed by the Assessee for these customers located outside India includes onsite services/jobs. The on-site services rendered directly at the customers premises abroad by the assessee's related Companies from their offices abroad would not attract any of the provisions enabling the Revenue to levy, assess and collect service tax. The Revenue was of the view that this is not the correct factual position. The

Revenue expressed a opinion that the onsite services/jobs undertaken on behalf of the assessee for which payment has been made to the Foreign Service Providers results in service tax being levied in India on reverse charge basis. Accordingly, show cause notice was adjudicated and the service tax liability/demand of Rs. 11,68,41,075/-, along with interest, was confirmed.

3. In such an appeal of the Assessee, the Tribunal had before it the complete record. The Tribunal had the benefit of the detailed argument on behalf of the Assessee and the Revenue on the point of jurisdiction, as also on merits. The Tribunal had before it the relevant circulars notifications and legal provisions.

4. However, the Tribunal in paragraph 5.1 of the impugned order referred to the agreement and the consequences thereof. The Tribunal rendered a finding that the question of subjecting such transactions under the agreement between the Assessee with the relevant Companies abroad, to service tax in India would not arise.

5. In paragraph 5.2 it referred to a clarification of the Central Board of Excise and Customs and which has also referred to some-what identical conclusion. The Tribunal referred to its orders in other cases and rendered according to it in identical circumstances.

6. Yet the Tribunal proceeds to remand the case back to the Adjudicating Authority, because according to the Tribunal, these issues were not examined by the Adjudicating Authority.

7. The Tribunal's finding justifying the remand is in paragraph 5.3. In that one paragraph the Tribunal deems it fit to observe that the issues noted by it have not been examined at all by the Adjudicating Authority. The Tribunal, therefore, deems it further necessary to remand the matter to the Adjudicating Authority and for fresh consideration of all the issues involved.

8. If the issues which are vital and for the adjudication have not been examined at all by the Adjudicating Authority, then its order can be said to be prima facie erroneous. That would have to be demonstrated by the party applying for Tribunal's intervention in appellate jurisdiction. If the appellant makes out a case for remand and in this case in the alternative, then, possibly we could have understood the Tribunal's order of remand or remittance back to the Adjudicating Authority. However, Mr. Raichandani appearing on behalf of the original appellant/assessee submits that the appellant had not sought a remand of the case back to the Adjudicating Authority. The appellant was desirous of demonstrating on the basis of the material before the Adjudicating Authority that its order is erroneous on facts and in law. Equally the Revenue also had not sought either remand or supported any such request emanating from the appellant. In such circumstances, we do not see how the Tribunal concluded that a remand is necessary. Though the appellate power by implication includes a power to remand the case back to the Adjudicating Authority, still such power should not be exercised routinely and as a matter of course. A remand should be

rare and should not furnish an opportunity to parties to get over or remove the defects and lacunas in their cases. Equally it should not furnish any reason for the Original/Adjudicating Authority to take up matters all over again and for fresh consideration. We do not see any specific issue necessitating a remand. Merely observing that the issues considered by the Tribunal in paragraph 5.1 and 5.2 have not been examined at all by the Adjudicating Authority would mean a blanket and complete remand of the original case. All this, in revenue matters ought to be avoided. It is in the interest of the public that matters concerning public revenue attain finality and expeditiously. In these circumstances, we are of the view that this appeal raises a substantial question of law. The appeal is, therefore, admitted on the following substantial question of law:-

"Whether CESTAT is right in remanding back the case to the adjudicating authority to decide the case afresh in the light of the cited cases?"

Since the facts and circumstances necessary for framing this question as substantial question of law admitting the appeal have been noted by us exhaustively hereinabove and finding that no different view can be taken at the hearing of this appeal that we propose to dispose of the appeal finally by consent of the parties. The appeal, is, accordingly disposed of by consent of parties. The impugned order passed by the Tribunal is quashed and set aside. The appeal, shall now be heard by the Tribunal afresh on merits and in accordance with law. If there is any case law which the parties intend to refer, the parties can always place it before the Tribunal. We do not feel for consideration of the case law which has been placed by the parties before the Court or Tribunal, remand would be necessary. Since both the parties are stating and fairly that they would argue the appeal on the basis of the records or the material on the file of the Tribunal that we are of the view that the Tribunal should not entertain any fresh material from the parties. The parties would not be permitted to place on file of the Tribunal any additional documents or paper book containing additional documents. Both parties shall argue this appeal on the records as are available with the Tribunal and pertaining to the case and decided by the Adjudicating/ Original Authority With this clarification, we direct a fresh consideration of the appeal by the Tribunal. While considering it afresh, the Tribunal shall not be influenced by any observations made earlier. The contentions of both sides on the merits of the appeal are kept open. There will be no order as to costs.