(2015) 06 MAD CK 0565

In the Madras High Court

Case No : C.M.A. No. 1431 of 2011

Commissioner of Central Excise, Salem APPELLANT

Vs

CESTAT, Chennai RESPONDENT

Date of Decision : 19-06-2015

Acts Referred:
Finance Act, 1994 — Section 76, 78, 84

Citation : (2015) 39 STR 806

Hon'ble Judges : R. Sudhakar, J;K.B.K. Vasuki, J

Bench : Division Bench

Advocate : Vikram Ramakrishnan, for the Appellant; S. Jayakumar, Advocates for the Respondent

Judgement

R. Sudhakar, J—Aggrieved by the order passed by the Tribunal in allowing the appeal filed by the second respondent, the Revenue/appellant is before this Court by filing the present appeal. This Court, vide order dated 10-6-2011, while admitting the appeal, framed the following substantial questions of law for consideration:-

"(1) Whether the Customs, Excise and Service Tax Appellate Tribunal was justified in concluding that the Revision Order passed by the Commissioner under the provision of Section 84 of Finance Act, 1994 to be set aside when the issue under revision was not pending before the Commissioner of Central Excise (Appeals)?

(2) Whether the Customs, Excise and Service Tax Appellate Tribunal was correct in setting aside the Revision Order passed by the Commissioner even, when the Original Authority had committed a mistake apparent on the face of record in omitting to impose penalty under Section 76 of the Finance Act, 1994?"

The second respondent/assessee is engaged in the business of rendering photography service. Alleging that the assessee had undervalued the taxable services by deducting the cost of materials and chemicals and claimed exemption under Notification No. 12/2003-S.T. : MANU/DSTX/0014/2003, dated 20-6-2003 and suppressed the material details in ST-3 returns, show cause notice was issued proposing to demand appropriate Service Tax along with interest and penalty. The Adjudicating Authority, after due process of law, confirmed the demand of Rs. 52,417/- for the period 1-7-2003 to 9-9-2004 holding that there was short payment of Service Tax with an intention to evade payment of Service Tax. The Adjudicating Authority also imposed equal penalty under Section 78 of the Act. Aggrieved by the said order of the Adjudicating Authority, the assessee filed an appeal before the Commissioner (Appeals) and the same is pending. In the meantime, the Commissioner of Central Excise, in exercise of power conferred under Section 84 of the Finance Act, 1994, initiated review proceedings calling for the recording of the proceedings of the Adjudicating Authority and imposed equal amount of penalty under Section 76 of the Act. Aggrieved by the said order of revision, the assessee filed an appeal before the Tribunal along with an application for waiver of pre-deposit. The Tribunal, after hearing both sides, took the appeal itself. The Tribunal relying upon the decisions of the Tribunal set aside the review order passed by the Commissioner holding that when the dispute is pending before the Appellate Commissioner, the Commissioner of Central Excise should not impose higher penal liability. Aggrieved by the said order of the Tribunal, the Revenue is before this Court.

2. Learned counsel appearing for the second respondent/assessee raised a preliminary objection as to the maintainability of the case of the appellant contending that the appellant ought not to have filed appeal in view of the litigation policy of the Government issued by the Ministry of Finance, Department of Revenue, Central Board of Excise & Customs vide Instructions dated 20-10-2010 in F. No. 390/Misc./163/2010-JC, wherein the following instruction has been issued:-

"5. The Board has decided that appeals in the Tribunal shall not be filed where the duty involved or the total revenue including fine and penalty is Rs. 1 Lakh and below. Similarly, in the case of High Courts, appeals should not be filed in cases where the duty involved or total revenue including fine and penalty is Rs. 2 Lakhs and below. While deciding the thresholds mentioned above the duty involved shall be the decisive element. For example, in a case involving duty of Rs. 1 Lakh with mandatory penalty of Rs. 1 Lakh besides any other penalty imposed under the relevant provisions of Law, no appeal shall henceforth be filed in the Tribunal as the duty involved is within the monetary limit of Rs. 1 Lakh. Similarly, if the duty involved in a case is Rs. 2 Lakhs with equal mandatory penalty and any other penalty imposed under the Law in force at the relevant time, no appeal shall be filed before the High Court."

3. It is contended by the learned counsel for the second respondent that in view of the above instruction, for preferring an appeal, monetary limit is fixed and only if the monetary limit exceeds Rs. 2 Lakhs, appeal can be filed. Since the monetary limit in the present case, even as per the order of the Adjudicating

Authority is well within the limit of Rs. 2 Lakhs, the present appeal, filed by the Department, is not maintainable.

4. Heard learned Standing Counsel appearing for the appellant/Department and the learned counsel appearing for the second respondent/assessee and perused the materials available on record.

5. Even though this appeal was admitted on the questions of law referred to supra, we are not inclined to entertain this appeal in view of the preliminary objection made by the learned counsel for the second respondent that the monetary limit to prefer an appeal is pegged at Rs. 2,00,000/- by the litigation policy of the Government issued by the Ministry of Finance, Department of Revenue, Central Board of Excise & Customs vide Instructions dated 20-10-2010 in F. No. 390/Misc./163/2010-JC.

6. It is seen from the records that the Adjudicating Authority initially imposed Rs. 52,417/- as Service Tax with applicable interest and penalty equivalent to the demand of Rs. 52,417/-. Therefore, it is very clear from the records that the monetary limit having been fixed at Rs. 2 Lakhs, even as per the order of the Adjudicating Authority, the interest and penalty being less than Rs. 2 Lakhs, the appeal is not maintainable. The above said circular issued by the Board is squarely applicable to the facts of the present case and, therefore, this Court is not inclined to entertain this appeal. Accordingly, without going into the merits of the questions of law formulated and in the light of the Board''s circular mentioned supra, this appeal is dismissed as not maintainable. However, there shall be no order as to costs.