(2012) 03 KL CK 0039

In the High Court Of Kerala

Case No : C.E. Appeal No''s. 16 and 17 of 2010

Commr. of C. Ex. , Cus. and S.T., Ernakulam APPELLANT

Vs

GAC Shipping (India) (P) Ltd. RESPONDENT

Date of Decision : 26-03-2012

Acts Referred:
Finance Act, 1994 — Section 65

Citation : (2012) 284 ELT 27

Hon'ble Judges : K. Vinod Chandran, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : John Varghese, SC, for the Appellant; Joseph Kodianthara (Sr.), Terry V. James, B.J. John Prakash, Tom Thomas (Kakkuzhiyil) and V. Abraham Markos, for the Respondent

Judgement

Ramachandran Nair, J.—The connected appeals are filed by the Service Tax Department challenging the orders of the Customs, Excise and Service Tax Appellate Tribunal cancelling revised demand of service tax, interest and penalty raised against the respondent for the periods 2000-01 to 2004-05 covered in C.E. Appeal No. 16/2010 and for the year 2005-06 covered in C.E. Appeal No. 17/2010. We have heard Shri John Varghese, learned Standing Counsel appearing for the appellant and learned Senior counsel Shri Joseph Kodiathara appearing for the respondent-assessee.

2. The respondent-company is engaged in the business of running steamer agency service and customs house agency service, both of which are taxable services u/s 65 of Finance Act, 1994. The Department noticed that service tax was not paid on the full taxable value of the services rendered by the respondent, and consequently adjudication orders were issued for the block period 2000-01 to 2004-05 and for 2005-06 by two separate orders. The first round of appeals before the Tribunal led to remand orders, one followed by the other, wherein the Tribunal after broadly discussing the issues raised remanded the case for de novo adjudication by specifically stating that "all issues are kept

open".

3. Based on remand orders, the Commissioner of Service Tax issued adjudication orders afresh, which were challenged in second round of appeals before the Tribunal. The Tribunal in the common order in paragraph 11 allowed the ground of limitation raised by the assessee against revised assessment by holding as follows:- "This finding of the Tribunal has not been challenged by the Revenue."

4. The first contention raised by the Learned Counsel for the appellant is that the Tribunal after issuing an open remand order leaving all issues open should not hold the earlier order against the Revenue. Contrary to the open remand in first round, the Tribunal issued orders cancelling the revised demand on ground of limitation but without going to the correctness of several items of taxable services which were subjected to tax and penalty.

5. After hearing both sides, we are unable to sustain the order of the Tribunal because an open remand leaving all issues open for decision in fresh adjudication means that the said order is not adverse to any of the parties in appeal. Therefore, it is not proper or fair on the part of the Tribunal to have treated any matter as concluded in their earlier order which was an open remand on all issues.

6. So far as the merit of the case is concerned also, we are equally dissatisfied with the orders of the Tribunal because the Tribunal just vacated the orders stating that the adjudication order itself contains inconsistent findings. The Tribunal''s approach itself is not correct because the respondent-assessee is engaged in two lines of business both are taxable services under the Finance Act as stated above. Therefore, essentially it is a matter of considering as to which are the activities or charges levied that do not constitute consideration for taxable service and only such of the items calls for elimination. When detailed adjudication order is challenged before the Tribunal wherein every receipt and expenditure are considered in assessment, it was the duty of the Tribunal to consider in detail the nature of charges collected by the assessee and to see whether those are for taxable services rendered, and if so to sustain it. Similarly if any amount collected is not in the nature of consideration for taxable services, necessarily the same has to be excluded. We are of the view that the Tribunal being the first appellate authority has no escape from considering the matter in detail and no shortcut method is permissible while disposing of first appeal.

7. In view of the findings above, we allow both the Central Excise Appeals by vacating the orders of the Tribunal and restore the appeals back to the files of the Tribunal with direction to them to repost the appeals, hear the matter on all issues raised as if those are first appeals filed for the first time and decide the matter without being influenced by their findings in the first round of appeals, which at the maximum amounts to observations or restatement of the arguments of the parties. The Tribunal should address all the issues raised against fresh adjudication orders issued after remand. There will be direction to

the Tribunal to hear and dispose of the appeals within a period of three months from the date of receipt of a copy of this judgment. The appellant is free to produce whatever is the evidence or records required and is also free to collect information from other collectorates and furnish the same so that there is no duplicity of assessment for the same service under 2 collectorates. These C.E. Appeals are disposed of as above.

