(2013) 09 BOM CK 0004

In the Bombay High Court

Case No : C.E.A. (L) No. 239 of 2013

Greenwich Meridian Logistic (I) Pvt. Ltd. APPELLANT

Vs

Commr. of S.T. RESPONDENT

Date of Decision : 03-09-2013

Acts Referred:

Citation : (2014) 35 STR 207

Hon'ble Judges : Mohit S. Shah, C.J;M.S. Sanklecha, J

Bench : Division Bench

Judgement

1. The appellant in this appeal u/s 83 of the Finance Act, 1994 read with Section 35G of the Central Excise Act, 1944 has challenged the order dated 8 July, 2013 of the Customs, Excise & Service Tax Appellate Tribunal (CESTAT) [2013(32) S.T.R. 753 (Tri.-Mum.)] granting stay against recovery of tax, interest and penalty on the condition that the appellant shall deposit Rs. 89 lakhs within a period of 8 weeks. The Tribunal has required the appellant to make the deposit of Rs. 89 lakhs which, as per the appellant, would be a demand for the normal period of limitation. Although numerous questions of law have been raised in the appeal, the basic issue raised is that in the facts of the present case the CESTAT should have completely dispensed with pre-deposit of duty and penalty for the purposes of hearing the appellant''s appeal on merits.

2. The appellant is a freight forwarding agency engaged in the business of booking cargo space on shipping lines for consideration and thereafter allotting the same to exporters also for consideration. The Revenue''s case is that the appellant is rendering business auxiliary services by promoting the service of cargo space provided by the shipping line, i.e. alleged client of the appellant. The case of the appellant is that it provides no service to the shipping lines in respect of promotion of its cargo space. The appellant purchases the cargo space from the shipping lines for consideration and thereafter makes it available to the exporters for consideration. Therefore, the case of the appellant is that it trades in cargo space and does not render any service to the shipping line. The Tribunal

by the impugned order prima facie did not accept the above submission and was of the view that the appellant rendered services to the shipping lines and was liable to pay service tax under the category of business auxiliary services.

3. Learned counsel for the appellant submits that the appellant is not an agent of the shipping lines and it had already paid the amount for booking the cargo space and thereafter the appellant had sold the cargo space to exporters. It is, therefore, submitted that for the extra amount received by the appellant from the exporter, which was its trading profit, cannot be treated as consideration received for providing service to the shipping lines. More so, when the appellant did not get any amount/payment from the shipping lines. Therefore, the appellant cannot be said to have provided any service to the shipping lines.

4. It is further submitted that by the impugned order the Tribunal has followed the decision of M/s. Leaap International Pvt. Ltd. Vs. The Commissioner of Service Tax, In the said case, the Tribunal had directed the assessee to make a pre-deposit of only Rs. 30 lakhs against the tax demand of Rs. 1.38 crore. In appeal from the above order, the Madras High Court had reduced the amount of pre-deposit to Rs. 20 lakhs. It is submitted that in the instant case though the tax demand is for an amount of Rs. 2.25 crores, as far as the normal period of limitation is concerned, the amount payable is Rs. 89 lakhs. Therefore, the Tribunal erred in directing the appellant to make pre-deposit of the entire amount within the period of limitation when the appellant has a strong arguable case.

5. On the other hand, Mr. Jetly, learned counsel for the Revenue, has submitted that as against the tax demand of Rs. 2.75 crores, the Tribunal has required the appellant to make pre-deposit of only Rs. 89 lakhs and, therefore, the order is just and calls for no interference.

6. Having heard the learned counsel for the parties and considering that the Tribunal has followed the decision of the Chennai Bench in Leaap International Pvt. Ltd. v. CST, Chennai (supra) whereby the Tribunal had directed the assessee to make pre-deposit of Rs. 30 lakhs against the tax demand of Rs. 1.38 crore which was within the period of limitation and even so the Madras High Court reduced the amount of pre-deposit to Rs. 20 lakhs. Moreover, the appellant has an arguable case in the appeal pending before the Tribunal, the interest of justice would be served if the amount of pre-deposit is reduced from Rs. 89 lakhs to Rs. 45 lakhs. At this, Mr. Wagley, learned counsel for the appellant, seeks further time of three months to make deposit as the appellant has liquidity problems. Accordingly the appeal is partly allowed and the impugned order of the Tribunal is modified to the extent that the appellant shall make a pre-deposit of Rs. 45 lakhs on or before 3 December, 2013. Until deposit of the said amount of Rs. 45 lakhs by 3 December, 2013, there shall be interim stay against recovery of tax, interest and penalty levied by the orders of the adjudicating authority.

