(2012) 03 BOM CK 0190

In the Bombay High Court

Case No : Central Excise Appeal No. 66 of 2011

Jaiprakash Strips Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 15-03-2012

Acts Referred:
Finance Act, 1994 — Section 73(1)(a)

Citation : (2012) 192 ECR 379 : (2013) 30 STR 139 : (2012) 35 STT 524

Hon'ble Judges : J.P. Devadhar, J;A.R Joshi, J

Bench : Division Bench

Advocate : Ashok Singh, for the Appellant; Pradeep S. Jetly and J.B. Mishra, for the Respondent

Final Decision : Dismissed

Judgement

1. Whether the CESTAT was justified in dismissing the appeal filed by the appellant - assessee for non-compliance of pre-deposit order, is the question of law raised in this appeal. During the years 1999-2000 to 2002-2003 the assessee had received Rs. 19,31,10,857/- as commission from eighteen parties. According to the assessee, the amounts received by them were for procuring orders on behalf of their principals which did not constitute taxable service and hence were not liable to pay service tax.

2. By Show-Cause Notice dated 1st July, 2004 the Assistant Commissioner of Central Excise and Customs, Division-IV, Nasik called upon the assessee to show cause as to why service tax amounting to Rs. 96,55,542/- should not be recovered from the assessee u/s 73(1)(a) of the Finance Act, 1994 in respect of the services rendered during the period from 1999-2000 to 2002-03. The assessee filed its reply opposing the claim of the revenue set out in the said show-cause notice. However, by an order in original No. 2/ST/2006 dated 28th August, 2006 the duty demand was confirmed. On appeal preferred by the assessee, the CESTAT vide its order dated 18th April, 2007 had set aside the adjudication order in the light of the Larger Bench decision of the Tribunal in the

case of Larsen & Toubro Ltd. v. CCE [2006] 4 STT 231 (New Delhi - CESTAT) and remanded the matter. On remand the matter was heard afresh and by adjudication order dated 29th March, 2008 the Commissioner for Central Excise confirmed the demand for Rs. 91,07,006/- and also imposed penalty on the assessee.

3. Challenging the order-in-original dated 29th March, 2008 the assessee filed an appeal before the CESTAT. The Tribunal by its order dated 10th February, 2009 directed the assessee to make pre-deposit of Rs. 30,00,000/- for entertaining the appeal. The assessee thereafter filed Modification Application. By an order dated 12th August, 2009 the said application was rejected by the Tribunal and the appeal was dismissed on the ground that the pre-deposit order has not been complied with.

4. Challenging the aforesaid order, the present appeal is filed by the Assessee.

5. Mr Singh, learned counsel appearing on behalf of the appellant submitted that the services rendered by the assessee were not Clearing and Forwarding Agent''s service (hereinafter referred to as "C&F Agents''). He submitted that the assessee was only assisting their Principals by way of procuring orders and rendering assistance in the matter of storage, transportation, etc, which would not qualify C&F Agents service. He submitted that the Commissioner as also the Tribunal has failed to consider that some of the amounts received by the assessee related to the sale of advance licence and not for rendering any clearing and forwarding agent''s service and in such situation the Adjudicating Authority as also the Tribunal could not have considered that the services rendered by the assessee were C&F Agents services. Mr Singh further submitted that the Tribunal ought to have considered all the 18 agreements entered into by and between the assessee with the respective parties. In the present case, since the Tribunal has considered only one licence, the order of the Tribunal is vitiated. Accordingly, he submits that the order passed by the Tribunal directing the pre-deposit and also the order of the Tribunal in dismissing the appeal for non-compliance of the pre-deposit order be quashed and set aside.

6. Mr Jetly, learned counsel appearing on behalf of the respondent supported the order on the basis of reasons recorded in the impugned order.

7. On consideration of the rival submissions, we see no reason to entertain the present appeal.

8. In the present case, though the Tribunal had initially remanded the matter for fresh consideration in the light of the larger Bench decision of the Tribunal in the case of Larsen & Toubro Ltd (supra), the adjudicating authority, on consideration of facts, has held that the larger Bench decision in the case of Larsen & Toubro Ltd. (supra) is distinguishable on facts, as in the present case, the assessee has not merely procured orders, but in fact handled the goods as per the terms of the contract entered into with various parties.

9. In fact, the Adjudicating Authority has considered most of the contracts entered into by the assessee with various parties and has arrived at a conclusion that the transactions entered into by the assessee with those parties do not appear to be simply placing orders and earning commission, but it is much more than that. The Adjudicating Authority has also held that the credit notes clearly disclose that the Assessee has directly dealt with the goods in lifting them, providing of the vehicles and delivery of the goods. In these circumstances, the prima facie view formed by the Tribunal that the adjudicating authority had reason to believe that the assessee had rendered the clearing and forwarding agent''s service cannot be faulted with. In these circumstances, the decision of the Tribunal in directing the assessee to make pre-deposit of Rs. 30,00,000/- out of the demand of Rs. 91,07,006/ - and dismissing the appeal for non compliance of the predeposit order cannot be faulted. In the result, the appeal is dismissed with no order as to costs.

