(2014) 05 P&H CK 0091

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 22541 of 2012

LSE Securities Ltd.		APPELLANT
	Vs	
Asstt. Commissioner, S.T. Division		RESPONDENT

Date of Decision : 06-05-2014

Acts Referred:
Constitution of India, 1950 — Article 226, 227

Citation : (2015) 320 ELT 350

Hon'ble Judges : Ajay Kumar Mittal, J;Jaspal Singh, J.

Bench : Division Bench

Advocate : Jagmohan Bansal, Advocate, for the Appellant; Ranjana Shahi, for the Respondent

Judgement

Jaspal Singh, J.?The instant writ petition under Articles 226 and 227 of the Constitution of India has been preferred by M/s. LSE Securities Ltd. for issuance of a writ in the nature of certiorari seeking quashment of show cause notice dated 5-10-2012 (Annexure P-5) and further for directing the respondent to refund a sum of Rs. 15,00,000/- along with interest deposited during the course of investigation. Briefly, stated the facts in brief giving rise to the instant lis are that the petitioner is a service provider in the category of Stock Broker Services and registered with the respondent-Department. The department conducted an investigation against the petitioner in the month of May, 2004 alleging nonpayment of service tax on the various charges i.e. transaction charges, stamp duty, BSE charges and SEBI fees etc., which revealed that during the period from December, 2000 to March, 2004, petitioner has recovered transaction charges from its sub-brokers, which were shown as income in the books of account and service tax was paid. However, in addition to the said transaction charges, petitioner also recovered certain other charges in the name of miscellaneous charges, trade guarantee fund (TGF) and Investors Protection Fund (IPF), Stamp Duty, Bombay Stock Exchange (BSE)/National Stock Exchange (NSE) Charges/ Exchange transaction charges, SEBI fee and Consumer Protection Fund (CPF) charges, which were neither reflected in the balance sheet nor any service tax was paid in that respect. The department calculated such amount to the tune of Rs. 2,46,85,713/- and service tax not paid by the petitioner was worked out to the tune of Rs. 6,18,761/-. When these facts were pointed out to the petitioner, it deposited a sum of Rs. 15,00,000/- and furnished an information to the department vide letter dated April 29, 2005. Thereafter, petitioner was served with show cause notice dated March 29,2006 raising a demand of service tax of Rs. 16,18,761/- under Section 73 of the Act by invoking the extended period of limitation. Vide the said notice demand of interest under Section 75 of the Act was also raised, besides proposing penal action under Sections 76, 77 and 78 of the Act.

2. Though the demand raised by the respondent/department was resisted but the adjudicating authority passed an order in original dated August 23, 2006 whereby the demand raised in the show cause notice was confirmed besides slapping an equal amount of penalty. Aggrieved with the order-in-original, petitioner challenged the same in appeal and Commissioner (Appeals) partially allowed the appeal vide order dated October 29, 2007. He extended the benefit of cum-tax-value under Section 67(2) of the Act and set aside the demand of Rs. 1,04,207/-. Further, Penalty imposed vide order-in-original was also set aside by Commissioner (Appeals), in view of the deposit of amount prior to the service of show cause notice.

3. Dissatisfied with an order passed in appeal, petitioner challenged the same by way of appeal before learned Tribunal qua confirmation of demand of service tax. The department also challenged the said order before the learned Tribunal who vide its order dated May 7, 2012 allowed the appeal filed by petitioner and set aside the impugned order passed by Commissioner of Central Excise (Appeals); besides, dismissing the appeal preferred by the respondent/department. Subsequent thereto, petitioner requested the respondent/department for refund of a sum of Rs. 15,00,000/- deposited during the course of investigation vide its letter dated July 4, 2012 (Annexure P-4) but respondent declined the grant of refund rather issued impugned show cause notice dated October 5,2012, which has been challenged through instant petition.

4. The contention of learned counsel for the petitioner is that impugned show cause notice dated October 5, 2012 (Annexure P-5) has been issued on the ground that an appeal has been filed before this Court against order dated May 7, 2012 passed by learned Tribunal and that an amount of Rs. 15,00,000/- deposited by the petitioner is not a pre-deposit under Section 35-F of the Act. But on these grounds, amount deposited by the petitioner could not have been retained, which was refunded during the pendency of present petition i.e. on February 12, 2014. An amount of Rs. 15,00,000/- was deposited in the month of April 2005 and the lis remained pending between the parties till May 7, 2012. The respondent has already utilised the amount for a sufficient period i.e. more than 7 years. So, the respondent is also obliged to pay interest from the date, the refund became due i.e. May 8,2012.

5. Per contra learned counsel for respondent/department has submitted that vide order dated February 12, 2014 passed by respondent, refund of Rs. 15,00,000/- has been allowed but petitioner in the facts and circumstances is not entitled to interest on the amount so deposited by it on April 29, 2005, which cannot be termed to be pre-deposit. Moreover, Section 35F of the Act only talks about refund of pre-deposit deposited with the adjudicating authority.

6. Having elaborately heard learned counsel for the parties and perusal of record available, we find substance in the contentions put-forth by learned counsel for the petitioner and submissions made by learned counsel for respondent to be of no legal weight.

7. Undeniably, respondent/department conducted an investigation against petitioner alleging non-payment of service tax on the various charges. During investigation, it revealed that service tax on various amounts totaling Rs. 2,46,85,713/- was not paid. Tax which was allegedly due was worked out at Rs. 16,18,761/-. Immediately, when this fact was pointed out, petitioner deposited an amount of Rs. 15,00,000/- and information in this regard was also transmitted to respondent/department vide letter dated April 29, 2005 but subsequently, after conclusion of the investigation, show cause notice dated March 29, 2006 was issued, which ultimately culminated into the demand as adjudicated by concerned authority vide original order dated August 23, 2006. It is also an undisputed fact that order-in-original dated August 23, 2006 has since been set aside by learned Tribunal vide order dated May 7, 2012. Mere pendency of appeal preferred by respondent/department challenging the order passed by Tribunal dated May 7, 2012 was itself no ground to delay the refund of amount of Rs. 15,00,000/- deposited by the assessee during the course of investigation.

8. The contention put-forth by learned counsel for respondent with regard to delay of refund under Section 35-F of the act is equally untenable. Since the respondent initiated an investigation against petitioner, with a view to show his bona fide, he deposited an amount of Rs. 15,00,000/- during the pendency of investigation but when the amount of service tax, interest or penalty imposed vide order-in-original dated August 23, 2006 has already been set aside by learned Tribunal vide order dated May 7, 2012, immediately, thereafter, respondent was bound to refund the amount. Since the amount has been unauthorizedly and without any legal basis, been withheld, the respondent was bound to pay interest especially, in the circumstances that amount of Rs. 15,00,000/- was utilised by respondent/department. In the light of what has been discussed above, the instant petition is disposed of and respondent/ department is directed to pay interest @15% per annum from the date it became due after excluding 3 months time from the date of passing of order i.e. from August 07, 2012 till February 12, 2014.