(2011) 12 P&H CK 0053

In the Punjab And Haryana At Chandigarh

Case No : CWP No. 17476 of 2011 (O and M)

Megh Raj Bansal APPELLANT

Vs

Customs Excise and Service Tax Appellate Tribunal and Another RESPONDENT

Date of Decision : 12-12-2011

Acts Referred:
Finance Act, 1994 — Section 73, 75, 76, 78

Citation : (2012) 47 VST 302

Hon'ble Judges : Hemant Gupta, J;G.S. Sandhawalia, J

Bench : Division Bench

Advocate : Akshay Bhan and Alok Mittal, for the Appellant; Sukhdev Sharma, for the Respondent

Judgement

Hemant Gupta, J.—Challenge in the present writ petition is to an order passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi (for short, "the Tribunal") on August 1, 2011 (annexure P5) on an application for waiver of pre-deposit of the amount of duty, penalty and interest. The petitioner was directed to deposit 50 per cent of the tax amount on such application. The petitioner is the sub-contractor having worked for main contractors, namely, M/s. Indure Pvt. Ltd., M/s. UEM India Ltd., M/s. Demean Pvt. Ltd. and M/s. Gannon Dunkerely and Company Ltd. The petitioner was served with a show-cause notice on March 25, 2009, for the reason that the petitioner has evaded payment of service tax total amounting to Rs. 59,69,183 during the period 2004-05 and 2005-06 u/s 73 of the Finance Act, 1994 (for short, "the Act"). In reply, the stand of the petitioner was that the service tax stands paid by the main contractor on the total amount inclusive of the service part, which was allotted to the petitioner by the main contractors. The adjudicating authority, vide order dated April 30, 2010, raised a demand of Rs. 54,16,682; equivalent amount of penalty u/s 78 and also imposed penalties u/s 76 and interest u/s 75 of the Act, apart from interest.

2. In an appeal by the petitioner before the Tribunal, a request for adjournment was made by the counsel for the petitioner on medical ground, but the same was rejected, as the medical certificate has not been attached. After rejecting the request for adjournment, the petitioner was directed to deposit 50 per cent of the tax amount.

3. In the present writ petition, challenging the order passed by the Tribunal, it is asserted by the petitioner that the amount of service tax stands paid by the main contractors and in support of such assertion, the petitioner attached the treasury receipts as annexure P6. It is averred by the petitioner to the following effect :

The main contractor has been depositing the amount of service tax due on the whole amount of service rendered by the main contractor which included the part of the service done by the petitioner and thus the petitioner has acted under the said bona fide belief that the petitioner is not liable to pay service tax as the same is being deposited by the main contractor. A copy of various challans for the period in dispute showing the service tax paid by some of the main contractors for the whole work which includes the part of the service rendered by the petitioner is annexed herewith as annexure P6 (colly).

4. In reply to the said paragraph, the Commissioner of Central Excise, Central Excise Commissionerate, Chandigarh, has averred to the following effect :

The version of the petitioner not admitted. The petitioner vide their letter dated September 16, 2008 submitted the letters from only two contractors, i.e., M/s. Indure Private Ltd. and UEM India Ltd., in which both the main contractors have given a general statement that they are paying the service tax with respect to the work done by the petitioner. No details are forthcoming as to how much service tax has been paid. In the circumstances, it cannot be established that all the 4 contractors have discharged the full service tax liability for the service provided by the petitioner.

5. After stating so, it is also stated that the petitioner, as a sub-contractor, is providing services to the main contractor and, therefore, it is liable to pay service tax on the services rendered by the petitioner to the main contractor.

6. We have heard learned counsel for the parties and find that there is no specific denial of the Revenue to the assertion in respect of payment of the service tax by the main contractors in view of the proof of deposit furnished as annexure P6. Mr. Sukhdev Sharma, learned counsel for the Revenue, could not dispute the argument that amount of service tax is payable in respect of the services rendered either by the contractor or by the sub-contractor and that the amount of service tax in respect of the same services cannot be charged twice.

7. We find that firstly the Tribunal was not justified in not accepting the request for adjournment for the reason that the medical certificate was not attached. While seeking adjournment on the medical ground by the counsel, the medical certificates are not expected to be produced. It is the statement made by the

counsel, which is expected to be accepted unless the circumstances are brought to the notice of the court or Tribunal to decline the request for adjournment sought on medical ground. We find that there was no reason to decline the request for adjournment, when sought by the counsel on the medical ground.

8. Even on the merits, we find that the petitioner has produced the challans in respect of deposit of service tax by the main contractors. In view of the said fact, the direction of the Tribunal to deposit 50 per cent of the amount of the demand raised, is unjustified and untenable. Consequently, we set aside the order of the Tribunal dated August 1, 2011 and direct the Tribunal to decide the appeal without any pre-deposit of the amount of the service tax, penalty and interest.