(2021) 11 CESTAT CK 0051

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Miscellaneous Application No. 85458 Of 2019, Service Tax Appeal No. 86128 Of 2015

M/s. Air India Ltd. APPELLANT

Vs

Commissioner Of Cen. Ex. And ST, Thane-I RESPONDENT

Date of Decision : 16-11-2021

Acts Referred:
Finance Act, 1994 — Section 65(105)(zzzq), 65(104c), 73(2), 75, 77(1)(a), 77(1)(c), 77(2)
Cestat Procedure Rule, 1982 — Rule 20

Citation : (2021) 11 CESTAT CK 0051

Hon'ble Judges : Dr. Suvendu Kumar Pati, J;Sanjiv Srivastava, Technical Member

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This is an appeal of 2015, and is directed against Order in Original No 02/AC/COMMR/Th-II/ST/2015 dated 16th February 20015 of the Commissioner of Central Excise, Thane-II. By the impugned order, the Commissioner has held as follows:

"ORDER

1. I determine and confirm the demand of service tax of Rs 227,24,91,160/- (Rupees two hundred twenty seven crore twenty four lakh ninety one thousand one hundred and sixty only) under section 73 (2) of Chapter V of Finance Act, 1994 for being recovered from M/s Air India Limited, Finance Building, Old Airport, Kalina, Santacruz East, Mumbai - 400029 along with accrued interest under Section 75 thereof.

2. I impose a penalty of Rs 227,24,91,160/- (Rupees two hundred twenty seven crore twenty four lakh ninety one thousand one hundred and sixty only) upon M/s Air India Limited, Finance Building, Old Airport, Kalina, Santacruz East, Mumbai - 400029 under Section 78 of Chapter V of the Finance Act, 1994; and

3. I impose a penalty of Rs 10,000/- each totaling Rs 30,000/- (Rupees thirty thousand only) under Section 77(1)(a), Section 77 (1) (c) and Section 77 (2) of Chapter V of the Finance Act, 1994."

2.1 A Show Cause Notice dated 23.04.2013 was issued to the appellant demanding service tax short paid by them under the category of Business Support Services (as defined by Section 65(105)(zzzq) read with Section 65 (104c) of the Chapter V of the Finance Act, 1994), rendered by the appellant to M/s Air India Charters Limited, for the period from October, 2007 to March 2012.

2.2 Show cause notice was adjudicated by the Commissioner by the impugned order referred in para 1 above.

2.3 Aggrieved by the impugned order, appellants preferred this appeal.

3.1 The matter was listed before us on 16.11.2021 when Shri Ajay Telisara, Chartered Accountant, appeared for the appellant and Shri S K Mathur, Special Counsel, appeared for the revenue.

3.2 Instead of placing the arguments in the matter, learned Chartered Accountant sought adjournment stating that the concerned partner of their firm who has to appear in the matter is not available for arguing the matter as he is out of station. It was pointed out to the Chartered Accountant, that while adjourning the matter on 23rd September 2021, bench has clearly observed "We make it clear to Authorized Representative and Counsel that no adjournment will be allowed on that day and matter will be taken up ex-parte for decision on merits in absence of any of party." In view of the above observations the matter cannot be adjourned, and he should make his submissions in the matter. Chartered Accountant expressed his inability to make submissions on the behalf of Appellant.

4.1 We have considered the submissions made and also take note of the fact that the matter has been adjourned considerable number of times in past on the request of both the sides. For this reason why we had made it clear vide our order on 23rd September 2021, that no further request for adjournment from either of side shall be entertained and the matter shall be taken up for hearing next time.

4.2 We asked the Chartered Accountant who appeared on the dated fixed for hearing to make submissions in the matter, except for stating that the concerned partner, is not available for arguing the case he has made no submissions.

4.3 In a similar situation Hon'ble Apex Court has in case of Ram Siromani Tripathi, held as follows while dismissing the appeal.

IN THE SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION

CIVIL APPEAL Nos. 9142-9144 OF 2010

RAM SIROMANI TRIPATHI &

ORS. ....APPELLANT(S)

VERSUS

STATE OF U.P. & ORS. ....RESPONDENT(S)

WITH

CIVIL APPEAL NO. 6156 OF 2012

ORDER

Mr. R.K. Ojha, learned counsel appears on behalf of the counsel for the appellants and submits that the learned counsel for the appellants is not present in the Court today. It is stated that he is out of station. This is no ground to seek adjournment. We therefore reject the request for adjournment. We have asked the learned counsel to argue the matter. He submits that he does not know anything about the case.

In these circumstances, we dismiss the appeals for non-prosecution.

We make it clear that since we have not found it to be a good ground for adjournment, under no circumstances, application for restoration shall be entertained.

.........................J. (A.K. SIKRI)

.........................J. (S. ABDUL NAZEER)

.........................J. (M.R. SHAH)

NEW DELHI,

FEBRUARY 7, 2019

4.4 Hon'ble Apex Court has recently in case of Ishwarlal Mali Rathod vs Gopal & Others vide order dated 20.09.2021 [in Special Leave Petition (Civil) Nos.1411714118 OF 2021] [LL 2021 SC 500], condemning the practice of seeking repeated adjournments and courts granting the same mechanically has observed as follows:

"5.5 Today the judiciary and the justice delivery system is facing acute problem of delay which ultimately affects the right of the litigant to access to justice and the speedy trial. Arrears are mounting because of such delay and dilatory tactics and asking repeated adjournments by the advocates and mechanically and in routine manner granted by the courts. It cannot be disputed that due to delay in access to justice and not getting the timely justice it may shaken the trust and confidence of the litigants in the justice delivery system. Many a times, the task of adjournments is used to kill Justice. Repeated adjournments break the back of the litigants. The courts are enjoying upon to perform their duties with the object of strengthening the confidence of common man in the institution entrusted with the administration of the justice. Any effort which weakens the system and shake the faith of the common man in the justice dispensation has to be discouraged. Therefore the courts shall not grant the adjournments in routine manner and mechanically and shall not be a party to cause for delay in dispensing the justice. The courts have to be diligence and take timely action in order to usher in efficient justice dispensation system and maintain faith in rule of law. We are also aware that whenever the trial courts refused to grant unnecessary adjournments many a times they are accused of being strict and they may face displeasure of the Bar. However, the judicial officers shall not worry about that if his conscience is clear and the judicial officer has to bear in mind his duties to the litigants who are before the courts and who have come for justice and for whom Courts are meant and all efforts shall be made by the courts to provide timely justice to the litigants. Take an example of the present case. Suit was for eviction. Many a times the suits are filed for eviction on the ground of bonafide requirements of the landlord. If plaintiff who seeks eviction decree on the ground of personal bonafide requirement is not getting the timely justice and he ultimately gets the decree after 10 to 15 years, at times cause for getting the eviction decree on the ground of personal bonafide requirement may be defeated. The resultant effect would be that such a litigant would lose confidence in the justice delivery system and instead of filing civil suit and following the law he may adopt the other mode which has no backing of law and ultimately it affects the rule of law. Therefore, the court shall be very slow in granting adjournments and as observed hereinabove they shall not grant repeated adjournments in routine manner. Time has now come to change the work culture and get out of the adjournment culture so that confidence and trust put by the litigants in the Justice delivery system is not shaken and Rule of Law is maintained.

5.6 In view of the above and for the reasons stated above and considering the fact that in the present case ten times adjournments were given between 2015 to 2019 and twice the orders were passed granting time for cross examination as a last chance and that too at one point of time even a cost was also imposed and even thereafter also when lastly the High Court passed an order with extending the time it was specifically mentioned that no further time shall be extended and/ or granted still the petitioner - defendant never availed of the liberty and the grace shown. In fact it can be said that the petitioner - defendant misused the liberty and the grace shown by the court. It is reported that as such now even the main suit has been disposed of. In view of the circumstances, the present SLPs deserve to be dismissed and are accordingly dismissed."

4.5 About Rs 227 crore of Service Tax with interest and equivalent amount of penalty is involved in the matter. The Appellant, M/s Air India is Public Sector Undertaking (as it was at the time of adjudication and till recently) and Ministry of Finance are respondent in matter. Both arms of Central Government litigating the matter for what reason and Counsels appointed by both the sides seeking adjournments after adjournments do not benefit the cause of litigants. Fairly such protracted and continued litigation between the arms of the government do not benefit the cause of public exchequer and shakes the faith of the public in the entire system.

4.7 In this case revenue has filed a Miscellaneous Application (ST/EH/85458/2019) seeking early hearing of the appeal on 11th February 2019. The ground stated in the application is the huge revenue involved. This application has been filed when the matter was being listed for regular hearing constantly from 2018. Even this application has not been decided till date for the reason of adjournments sought. We express our pain on the sorry state of affairs wherein public exchequer suffers on account of such protracted litigation. We still are unable to understand when the matter is on board for hearing, what was the reason for filing such infructuous application.

4.6 Rule 20 of the CESTAT Procedure Rule, 1982 reads as under:

RULE 20. Action on appeal for appellant's default. - Where on the day fixed for the hearing of the appeal or on any other day to which such hearing may be adjourned, the appellant does not appear when the appeal is called on for hearing, the Tribunal may, in its discretion, either dismiss the appeal for default or hear and decide it on merits :

Provided that where an appeal has been dismissed for default and the appellant appears afterwards and satisfies the Tribunal that there was sufficient cause for his non-appearance when the appeal was called on for hearing, the Tribunal shall make an order setting aside the dismissal and restore the appeal."

5.1 In view of the above decisions of the Hon'ble Apex Court and also taking note of the Rule 20 of CESTAT Procedure Rule, 1982, we dismiss this appeal for non prosecution.

5.2 The Miscellaneous Application seeking early hearing filed by the revenue to is dismissed as infructuous.

(Order pronounced in the open court)

