(2015) 04 CESTAT CK 0004

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Stay Application No. 50516 Of 2014, Service Tax Miscellaneous No. 50348 Of 2015, Service Tax Appeal No. 50411 Of 2014

M/s. Dharamraj Industrial Contracts (I) Pvt. Ltd APPELLANT

Vs

C C.E., Delhi-I RESPONDENT

Date of Decision : 07-04-2015

Acts Referred:
Finance Act, 1994 — Section 76, 77, 78

Citation : (2015) 04 CESTAT CK 0004

Hon'ble Judges : G. Raghuram, J;R. K. Singh, Technical Member

Bench : Division Bench

Advocate : AK Batra, Rajiv Tandan

Final Decision : Disposed Of

Judgement

1. At the stage of considering the Stay Application, in view of the peculiar facts and circumstances of this appeal and after hearing the Id. consultant

for the appellant and the Id. Departmental Representative for the respondent/ Revenue, we dispose of the substantive appeal itself.

2. A Show Cause Notice was issued on 12.04.2012 proposing classification of the services provided by the appellant during 2006-07 to 2010-11 either

as 'Construction of Complex' service or/and 'Commercial or Industrial Construction' service. The Show Cause Notice also proposed a best judgement

assessment for the financial year 2010-11 on the basis of the turnover during preceding years. A service tax demand of Rs.17,36,10,980/- was

proposed along with appropriation of Rs.20 lakhs already deposited. The Show Cause Notice also proposed levy of interest and penalties as specified

therein.

3. The impugned adjudication order dated 30.09.2013 by the C.C.E., Delhi-I confirmed service tax demand of Rs.17,36,10,980/-, appropriated Rs.20

lakhs already deposited and confirmed demand for interest and penalties under Sections 77 and 78 of the Finance Act, 1994 while eschewing the

penalties under Section 76 of the Act.

4. The appellant/assessee failed to file a response to the Show Cause Notice dated 12.04.2012 and thus failed to rebut the allegations therein including

on the classification or the valuation of the alleged taxable service. Para 28 of the impugned order records that the petitioner/appellant failed to turn up

and avail the opportunity of personal hearing as well. This paragraph records that on 08.11.2012, 10.12.2012, 12.06.2013 and 12.08.2013, being the

dates scheduled for personal hearing, the appellant sought adjournments on one ground or the other. In the circumstances a further date for personal

hearing was scheduled on 06.09.2013. The appellant vide its letter dated 07.09.2013 sought adjournment of personal hearing on the ground that its

clerk received the notice of personal hearing on 06.09.2013 and its authorised representative is unable to attend the hearing.

5. At the hearing of the matter today, Shri AK Batra, Id. consultant contends that the conduct of the adjudicating authority in not granting adjournment

of the personal hearing of the appellant scheduled on 06 09.2013, in the context of the fact that the notice of hearing on the said date was received on

the very same day; and in proceeding to pass an adjudication order ex parte, was against the principles of natural justice. Shri AK Batra also contends

that the impugned order is unsustainable on merits both on classification and valuation grounds as well as on the issue of bar of limitation, for a part of

the period in issue.

6. Having carefully considered the material on record, we are of the view that a determination on the merits of the appeal invites analysis of disputed

questions of facts and interpretation of the contracts in issue; analysis and application of exemption and abatement notifications; and of the Valuation

and Composition Rules which were in operation both prior and subsequent to 01.06.2007, the date on which Works Contract service (WCS) was

introduced as a taxable service. Such analysis of the relevant factual matrix and appreciation of relevant provisions of the Act and Statutory Rules is

more appropriately done in primary adjudication by the Respondent

Commissioner. The appellant/ assessee, by its consistent conduct of non-

cooperation and non-participation in the adjudication proceedings, obstructed the due course of adjudication. This conduct of the appellant is clearly

condemnable and leads to clearly avoidable waste of appellate time, involved in this Tribunal taking a first call on the analysis of the facts and law,

applicable in this appeal.

7. In the circumstances, we are of the considered view that the appellant could be given one last opportunity to submit its response to the Show Cause

Notice dated 12.04.2012, but on terms as to heavy costs on account of its continuous and sustained conduct of non-cooperation with the adjudication

process, at the primary level.

8. We therefore set aside the impugned order but on condition that the appellant deposits Rs.1 lakh towards costs to the credit of Revenue within 30

days from today and files its written response to the Show Cause Notice, without further excuse on any grounds whatsoever. The response of the

appellant shall reach the respondent adjudicating authority within 30 days from today. If the appellant fails to deposit Rs.1 lakh within time specified

herein or fails to file its written reply within the stipulated time, this appeal stands dismissed and the impugned adjudication order stands confirmed. If

the appellant complies with both the above conditions, the adjudicating authority shall issue a fresh notice for personal hearing of the appellant which

the appellant shall attend without seeking adjournment for any reason whatsoever, on the scheduled date intimated to it for such hearing.

Thereafter the respondent shall dispose of the matter on the material available on record and without reference to the impugned order, dated

13.09.2013. We dispose of the appeal as above, with the consent of both parties.

