(2015) 06 MAD CK 0055

In the Madras High Court

Case No : C.M.A. Nos. 1197-1213 of 2015

S. Ayyakkannu & Co. APPELLANT

Vs

CESTAT, Chennai RESPONDENT

Date of Decision : 17-06-2015

Acts Referred:

Citation : (2015) 40 STR 628

Hon'ble Judges : R. Sudhakar and K.B.K. Vasuki, JJ.

Bench : Division Bench

Advocate : Shankaraman, for the Appellant; A.P. Srinivas, for the Respondent

Judgement

R. Sudhakar, J.—Aggrieved by the common order of the Tribunal in remanding the matters back to the adjudicating authority in the appeal filed by the Revenue, the appellant/assessee is before this Court by filing the present appeals raising the following questions of law:-

"(i) Whether the first respondent is correct in ignoring the fact that the notice has not referred to any specific service rendered by the appellant and whether any service rendered is taxable or not?

(ii) Is the first respondent right in ignoring the ruling of the Hon''ble Supreme Court which holds that there should be a proposal for classification and only thereafter there can be a demand?

(iii) Whether the first respondent is correct in overlooking the fact that the allegation contained in the show cause notice is the foundation and the department has to build a case on that. If the allegation is not specific then the consequence of the same has to be faced by the Department?

(iv) Whether the first respondent is correct in not examining the issue that the entire demand is vitiated due to not raising specific allegation on classification of the service and its taxability?"

It is submitted by the learned counsel appearing for the appellant that the issue involved in the above appeals is arising out of the common order passed by the Tribunal. The said common order of the Tribunal has been challenged before this Court in a batch of appeals. This Court vide order dated 30-4-2015 in C.M.A. Nos. 764 to 768 of 2015 [Thirumurugan Enterprises Vs. The Customs, Excise and Service Tax Appellate Tribunal and Others-->], allowed the appeals by way of remand, holding as follows:

"16. This Court, therefore, is of the considered view that without going into these issues, mere remanding the matter back and asking the adjudicating authority to re-adjudicate the matter after giving break-up of the details to the assessees/ appellants will not suffice. The issues raised by the appellants/assessees and answered by the Commissioner (Appeals) in their favour has to be considered by the Tribunal on its own merits and there being no finding on the issues in the manner in which the plea has been taken by the present appellants, who were successful before the Commissioner (Appeals), we find that the order of the Tribunal cannot be sustained on an issue of open remand.

17. The arguments of the learned standing counsel for the Department that all the issues can be trashed out before the adjudicating authority does not find favour with this Court as the Department cannot be allowed to fill up the lacunae in the show cause notices on the basis of an open remand as alleged by appellants.

18. Therefore, this Court is of the considered view that the matter has to be remitted back to the Tribunal to consider the facts, as narrated above, as has been presented by the Department and contested by the appellants/assessees in the proceedings before the lower authorities as well.

19. Accordingly, this Court sets aside the order of the Tribunal and remands the matter back to the Tribunal to answer the issues in relation to the findings of the Commissioner (Appeals) which was under challenge before the Tribunal in the appeals. All the appeals are allowed by way of remand. Consequently, connected miscellaneous petitions are closed. However, in the circumstances of the case, there shall be no order as to costs."

2. Following the above-said decision of this Court, all the above Civil Miscellaneous Appeals are allowed in the same terms. No costs. Consequently, connected M.Ps. are closed.

