(2013) 09 AP CK 0093

In the Andhra Pradesh High Court

Case No : Writ Petition No. 25939 of 2013

SCV Cable Net APPELLANT

Vs

CESTAT, Bangalore RESPONDENT

Date of Decision : 18-09-2013

Acts Referred:

Citation : (2014) 45 GST 435 : (2014) 33 STR 144

Hon'ble Judges : G. Rohini, J;Challa Kodanda Ram, J

Bench : Division Bench

Advocate : E. Manohar, for the Appellant; Jalakram Satyaram, for the Respondent

Judgement

G. Rohini, J.—The petitioner is engaged in the business of providing Multi-System Operator (MSO) services to the Cable Operators. By the Order-in-Original, dated 30-9-2010 the Commissioner of Customs and Central Excise, Tirupathi determined the liability of the petitioner to pay Rs. 2,61,17,081/- towards Service Tax and Educational Cess u/s 73(1) of the Finance Act, 1994 for the period from September, 2004 to December, 2008 apart from the penalty equal to the service tax amount. Challenging the said order, the petitioner filed Appeal No. 222 of 2011 before the Customs, Excise and Service Tax Appellate Tribunal, Southern Region, Bangalore along with Application No. 105 of 2011 for waiver of pre-deposit and stay of the order dated 30-9-2010. The said Stay Application No. 105 of 2011 was disposed of by the CESTAT by order dated 9-7-2013 directing that the petitioner shall remit the entire assessed liability to the credit of the revenue within eight (8) weeks and shall report compliance by 8-11-2013. Aggrieved by the said order, the present Writ Petition is filed.

2. We have heard Sri E. Manohar, the learned Senior Counsel appearing for the petitioner and Sri Jalakam Satyaram, the learned Standing Counsel for Customs & Central Excise appearing for the respondents.

3. At the outset, it is pointed out by the learned Senior Counsel appearing for the

petitioner that in fact the application filed by the petitioner for receiving additional evidence containing all the relevant facts to establish that the demand of Service Tax under the order dated 30-9-2010 is unsustainable and another application to raise additional grounds were listed before the Tribunal below on 9-7-2013, however the Tribunal proceeded with the petition for stay though it was not listed and passed the impugned order dated 9-7-2013 directing to remit the entire amount assessed.

4. It is contended by the learned Senior Counsel that the Appellate Tribunal ought not to have gone into the merits of the case at this stage and at any rate as the reasons given in the impugned order are not at all germane for consideration of the application filed u/s 35F of the Central Excise Act, the impugned order is unsustainable and is liable to be set aside. It is apparent from the material placed before us that the petitioner filed separate petitions being Miscellaneous Application Nos. 26569 and 26570 of 2013 with a prayer to receive certain documents as additional evidence, to raise additional ground and also seeking modification of the prayer in Appeal No. 222 of 2011. The specific plea of the petitioner that the said Miscellaneous Applications alone were listed before the Tribunal below on 9-7-2013 but not the Stay Application No. 105 of 2011 could not be disputed by the learned Standing Counsel appearing for the respondents.

5. However, the Tribunal below passed the impugned order dated 9-7-2013 on Stay Application No. 105 of 2011 and in view of the said order and for the reasons recorded therein, Miscellaneous Application filed for receiving additional evidence was also dismissed. Having regard to the admitted fact that the petitioner''s application to receive the additional evidence and additional grounds are also numbered and in fact the said applications were listed for hearing on 9-7-2013 it appears to us that the Tribunal below ought to have considered the same and passed orders thereon before taking up the Stay Application. In the facts and circumstances of the case, we find force in the submission of the learned counsel for the petitioner that non-consideration of the petitioner''s application to receive the additional evidence in spite of the fact that it is listed for hearing, caused grave prejudice to the case of the petitioner. In the light of the admitted facts, we consider it appropriate to set aside the impugned orders dated 9-7-2013 passed in Stay Application No. 105 of 2011 and the other Miscellaneous Applications and direct fresh consideration of the said applications in the light of the observations made above. Accordingly, the impugned orders are hereby set aside and the Writ Petition is disposed of at the stage of admission with a direction to the Tribunal below to pass appropriate orders afresh after giving an opportunity of being heard to the petitioner as expeditiously as possible preferably within a period of eight (8) weeks from the date of receipt of this order. No costs. Consequently, Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.