(2014) 12 MAD CK 0227

In the Madras High Court

Case No : Civil Miscellaneous Appeal No. 3345 of 2014 and M.P. No. 1 of 2014

Shrivari Enterprises APPELLANT

Vs

Commissioner of Service Tax RESPONDENT

Date of Decision : 05-12-2014

Acts Referred:

Finance Act, 1994 — Section 67, 68, 70, 73(1)

Citation : (2016) 41 STR 819

Hon'ble Judges : R. Sudhakar, J;R. Karuppiah, J

Bench : Division Bench

Judgement

R. Sudhakar, J.—This Civil Miscellaneous Appeal is filed by the assessee as against the order of the Customs, Excise and Service Tax Appellate Tribunal raising the following substantial questions of law:

"1. Whether in facts and circumstances of the case, the Tribunal was right in dismissing the appeal without considering any of the legal issues with reference to non-taxability?

2. Whether in facts and circumstances of the case, the Tribunal was right in dismissing the appeal for non-compliance of its interim order before the expiry of the time limit available under law for an appeal before the High Court against such interim order?

3. Whether in facts and circumstances of the case, the Tribunal was right in ordering pre-deposit based on the earlier order even though there were no discussions on merits of the case in the earlier order?

4. Whether in facts and circumstances of the case, the Tribunal was right in not appreciating the legal position that once the activity is specifically covered under a particular category of taxable service it cannot be brought under a general category for the purpose of levy of service tax?"

2. The appellant-company, which is an outsourcing agency, is engaged in the

activity of verification and collection activity on behalf of various banks/financing companies. The verification activity includes verification of the credentials such as address, work place, tele verification residence etc. of the loan applicants of the banks and finance companies and assist the bank in evaluating the loan applicant. According to the Adjudicating Authority this activity of the appellant is covered under the category ''Business Auxiliary Service''. The appellant has also obtained service tax registration for providing the said service to the bank/ finance companies. Based on the intelligence gathered that the appellant had evaded payment of service tax by way of suppression of the actual value of service rendered, a show cause notice was issued to the appellant dated 27.04.2007 proposing to demand service tax for the period from 1.7.2003 to 31.3.2006 to the tune of Rs. 97,01,230/-. For the subsequent period, i.e., 1.4.2006 to 31.3.2007, 1.4.2007 to 31.3.2008 and 1.4.2008 to 31.3.2009, the appellant was asked to submit details of the amount billed, amount realised and the amount paid towards service tax and education cess. The appellant was also asked to file ST3 returns. After repeated letters and summons, the appellant provided all the details asked by the Adjudicating Authority. From the details produced, the Adjudicating Authority found that the appellant had contravened the provisions of Sections 67, 68 and 70 of the Finance Act as they had not paid service tax on the gross value of taxable service and also failed to file ST3 returns on due dates. Hence, the Adjudicating Authority demanded service tax under Section 73(1) of the Finance Act, 1994 together with interest and penalty. Aggrieved by the order of the Adjudicating Authority, the appellant filed an appeal before the Tribunal along with an application for waiver of pre-deposit.

3. The Tribunal, by order dated 01.01.2014, following the earlier order dated 29.2.2008 in respect of the appellant''s own case, directed the appellant to deposit an amount of Rs. 56,00,000/- within a period of eight weeks and report compliance by 05.03.2014. Since the appellant has not deposited the said amount within the stipulated period, the Tribunal dismissed the appeal for non-compliance of the order. Aggrieved by the said order of the Tribunal, the appellant is before this Court.

4. Heard learned counsel appearing for the appellant and perused the materials placed before this Court.

5. The main plea of the appellant is that due to financial hardship, they are not able to comply with the conditional order of the Tribunal. However, for the plea of financial hardship, the appellant has not filed any particulars to substantiate the plea of financial hardship in the application filed for pre-deposit before the Tribunal. Hence, the plea of financial hardship without any relevant particulars is not a ground for this Court to entertain this appeal filed as against the final order passed by the Tribunal dismissing the appeal for non-compliance of the conditional order. Paragraph 2 of the order of the Tribunal dated 01.01.2014 reads as follows:

"2. The assessee filed an application for waiver of predeposit of tax of Rs.

2,23,71,850/-along with interest and penalty for the period 2006-07 to 2008-09. The demand was raised under the category of "Business Auxiliary Service". The applicant is engaged in the verification and collection activity including verification of the credentials of the loan applicants on the banks and finance companies and assisting the bank in evaluating the loan applicants. We find that in the applicant''s own case, the Tribunal vide Stay Order No. 182/2008 dt. 29.2.2008 directed them to make a predeposit of about 25% of the tax. In view of that, we direct the applicant to deposit an amount of Rs. 56,00,000/- (Rupees Fifty Six lakhs only) within 8 weeks. Upon deposit of the said amount, predeposit of balance tax along with interest and penalty would be waived and its collection is stayed during pendency of the appeal. Compliance is to be reported in 05-03-2014."

6. We have perused the application filed for pre-deposit and the relevant portion of which reads as follows:

"The Petitioner shall place their Balance Sheet before the Hon''ble Tribunal during hearing to establish that undue hardship will be caused if the Petitioner is required to pre-deposit of service tax demand/interest/penalty.

PRAYER

Therefore, the Petitioner prays that the Hon''ble CESTAT may be pleased to-

i) waive pre-deposit of entire service tax, interest and penalty confirmed in the impugned order and admit the appeal for disposal in accordance with law.

ii) Stay recovery of entire service tax/interest/penalty confirmed in the impugned order pending appeal."

7. In the absence of any material to prove the financial hardship, we find no reason to modify the order of the Tribunal, which has been considerate enough in ordering pre-deposit of approximately 25%, which we find consistently followed by the Tribunal. In this case, we also find that the appeal on this trivial issue of modification of the amount for pre-deposit is consuming more time of this Court, which would be otherwise be used in disposing main appeals.

8. Accordingly, we find no prima facie case to modify the order of the Tribunal. Learned counsel appearing for the appellant seeks six week''s time to deposit the amount. We are not inclined to grant such an extended period of time.

9. For the foregoing reasons, we pass the following order:

(i) On the questions of law raised, we are of the view that the Tribunal was justified in ordering the pre-deposit in the manner stated in its order dated 01.01.2014;

(ii) Since the appellant pleads time to deposit the amount, the order of the Tribunal dated 01.01.2014 is modified to the effect that the appellant shall make a pre-deposit, as ordered by the Tribunal, within a period of 30 days from today,

(iii) On such deposit, the order of the Tribunal dated 17.3.2014 dismissing the appeal for non-compliance of the stay order is set aside and the appeal is restored to the file of the Tribunal.

In the result, this Civil Miscellaneous appeal is ordered in the above terms. No costs. Consequently, connected Miscellaneous Petition is closed.

