(2014) 10 MAD CK 0051

In the Madras High Court

Case No : Civil Miscellaneous Appeal Nos. 278 and 2053 of 2014 and M.P. Nos. 1 and 1 of 2014

Sri Mahaavir Enterprises APPELLANT

Vs

The Customs, Excise and Service Tax Appellate Tribunal and Others RESPONDENT

Date of Decision : 30-10-2014

Acts Referred:

Citation : (2014) 10 MAD CK 0051

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

Bench : Division Bench

Advocate : K. Jayachandran, Advocates for the Appellant

Judgement

R. Sudhakar, J.—The appellant is engaged in providing services of supply of labourers to various companies located in and around Karaikal. They registered with the Department under the category of "Man Power Recruitment or Supply Agency" on 09.05.2006 and were issued a service tax registration number. The Department in the course of investigation found that the service provider/ appellant had not properly discharged the service tax liability on the taxable service provided by them. The period in question is 16.6.2005 to 31.3.2010.

2. The present issue relates to the service provided by the appellant to one RNS Infrastructure Limited, who according to the appellant is the principal contractor. The case of the Department is that the service tax liability in respect of the service rendered to RNS Infrastructure Limited has not been discharged by the appellant, whereas the appellant''s plea is that the principal contractor RNS Infrastructure Limited have deducted the service tax liability and had paid the same to the Department. To support this plea that the principal contractor RNS Infrastructure Limited had paid the service tax component, the appellant relied upon the letter dated 04.10.2010 addressed by the RNS Infrastructure Limited to the Superintendent of Central Excise, Cantonment, Trichy that they have discharged the service tax liability and they have also enclosed the copies of ST-3

returns, TR-6 challans and the work bill copies etc.

3. A show cause notice was issued after completion of the enquiry on 19.10.2010 demanding a sum of Rs.14,65,903/- as service tax payable for the period 16.6.2005 to 31.3.2010. The appellant filed a reply to the show cause notice and participated in the adjudication proceedings. The Joint Commissioner of Central Excise/Adjudicating Authority confirmed the proposal by order No. 13 of 2011-ST dated 29.7.2011 demanding service tax and also imposed penalty and interest.

4. As against the order of the Adjudicating Authority, the appellant pursued the matter before the Commissioner of Central Excise (Appeals), who considered the issue of pre-deposit, but rejected the appeal in Appeal No. 148 of 2012 by order dated 24.7.2012. Thereafter, the appellant pursued the matter before the Tribunal along with the application for waiver of pre-deposit. The Tribunal by order dated 12.3.2013 in miscellaneous order No. 40681 of 2013 directed the appellant to deposit the entire amount of service tax. Citing grave prejudice and financial hardship and prima face case on the basis of the ST-3 returns of RNS Infrastructure Limited, an application was filed by the appellant to modify the order dated 12.3.2013. In support of that application for modification, the appellant submitted the details of payment made by the principal contractor. The Tribunal by Miscellaneous order No. 41375 of 2013 dated 27.5.2013 rejected the application for modification on the ground that the details were not filed before the Original Authority. Against this order dated 27.5.2013 passed by the Tribunal declining to modify the pre-deposit order, C.M.A. No. 278 of 2014 has been filed. In the meanwhile, the Tribunal dismissed the main appeal for non-compliance of the condition imposed and as a consequence, the appellant filed C.M.A. No. 2053 of 2014.

5. Notice was ordered to the respondent and Mr.T.Chandrasekaran, learned standing counsel entered appearance for the respondent/Department.

6. Mr.K.Jayachandran, learned counsel appearing for the appellant prima facie pleaded that the principal contractor RNS Infrastructure Limited has paid the entire service tax and hence the demand on the appellant on the same transaction would amount to double taxation. He further pleaded that originally, the service tax liability was on the main contractor and only by circular dated 23.8.2007, it was clarified by the Board that the sub- contractor is liable to pay the service tax. The documents furnished before the Tribunal, namely, ST-3 returns and TR-6 challans and other documents, were referable to letter dated 04.10.2010 issued by RNS Infrastructure Limited to the Superintendent of Central Excise, Cantonment, Trichy citing out the details of payment of service tax. It is also the further plea of the appellant that RNS Infrastructure Limited is entitled to pay the service tax and therefore, it is revenue neutral. Nevertheless, the Tribunal, thought it fit to order pre-deposit of the entire amount and the modification petition was also dismissed holding that the additional evidence was not produced before the lower authorities. He further pleaded that there was a clear indication by RNS Infrastructure Limited at the earliest point of time

informing the respondent/Department that they had discharged the service tax liability. The Department, however, has not proceeded to enquire into that, but proceeded to hold that the assessee had not filed the relevant documents. Hence, the order of the Tribunal has to be set aside.

7. Heard learned counsel appearing for the assessee and the learned standing counsel appearing for the respondent/Department and perused the materials placed before this Court.

8. It is relevant to note that the appellant has produced relevant documents before the Tribunal as well as before this Court. If the stand of the appellant that the service tax liability is discharged is proved to be correct on the basis of the records furnished, the Department ought to have consider payment of service tax in the light of such statement. This stand is not a new one taken at the first time before the Tribunal, but has been communicated by the principal contractor at the earliest point of time even before the Adjudicating Authority. The appellant is only a civil contractor working under the principal contractor. If records are available with the Department, then there is no reason why the authority should have refused to go into the claim and verify the bona fides of such a plea of payment of service tax. At this point of time, we are not testing the merits of the documents furnished, namely, ST-3 returns and other connected documents. But that will be a prima facie material for us to consider that the issue requires to be properly considered by the Department in the light of what has been stated on 04.10.2010 and supported by the documents. If it is found true, then the consequence will flow therefrom.

9. We find that the appellant had discharged the service tax liability in respect of other contracts. To that extent there appears to be bona fide on the part of the appellant. Insofar as the present contractor, RNS Infrastructure Limited alone confusion arose because of the claim of the principal contractor that they have discharged the service tax liability. To reiterate this issue by referring to para 5.1 of the reply to the show cause notice, where a reference was made to the letter dated 04.10.2010 along with the annexures of copies made by the appellant and also referred to by the Adjudicating Authority in paragraph 14 of the order.

10. In such circumstances, we feel that subject to verification of those records, which they have filed before the Tribunal and before this Court, the Tribunal should go into the issue, so that the claim of the appellant on the discharge of service tax liability by the principal contractor could be tested before the appropriate forum. However, for the purpose of deciding the main appeal we are inclined to modify the order of the Tribunal in the following manner:

i) The order of the Tribunal dated 27.05.2014 is modified to the effect that the appellant shall make a pre-deposit of Rs.5,00,000/- (Rupees Five Lakhs only) towards pre-deposit on or before 23.12.2014 and subject to such compliance, as stated in the order of the Tribunal dated 27.05.2014, the pre-deposit of balance amount demanded shall remain waived and its collection shall stand stayed during the pendency of the appeal before the Tribunal; and

ii) The order of the Tribunal dated 21.3.2014 dismissing the appeal for non-compliance of the stay order is set aside and the appeal is restored to the file of the Tribunal subject to compliance as above;

In the result, both the Civil Miscellaneous Appeals are allowed in the above terms. Consequently, M.P. Nos. 1 and 1 of 2014 are closed.

