
(2015) 02 BOM CK 0325
In the Bombay High Court
Case No : Writ Petition No. 1795 of 2014

TCS e-Serve Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 23-02-2015

Acts Referred:

Citation : (2015) 321 ELT 564

Hon'ble Judges : S.C. Dharmadhikari, J;S.P. Deshmukh, J

Bench : Division Bench

Advocate : Naresh Thacker, Nandagopal and Divya Jeswant i/b. Economic Law Practice, for the Appellant; Advait Sethna and Suchitra Kamble, Advocates for the Respondent

Judgement

1. We have heard both sides. We have perused the Memo of the writ petition and the annexures thereto, particularly the impugned communication Annexure-R at page 113 of the paper-book.

2. An application for refund was made by the petitioner-assessee in the requisite form on 2nd September, 2013, claiming refund of service tax amounting to Rs. 2,50,06,269/-. This was on the basis of an order of the Customs, Excise and Service Tax Appellate Tribunal dated 7th May, 2013.

3. The Tribunal had held that the services received by the petitioner-assessee before us cannot be chargeable to service tax in terms of the applicable legal provision on the footing and strength of the order of this Tribunal the claim for refund was made and it is rejected only on the ground that the Department has not accepted the Tribunal's order and has filed an appeal against the same in this Court. On filing of this appeal, the claim is said to be sub judice.

4. The accompanying Central Excise Appeal No. 44 of 2014 has been admitted by us. However, we have not stayed the order passed by the Tribunal in this appeal of the Revenue. In the circumstances, we do not think that the Revenue was justified in not processing the application in accordance with law.

5. There is no legal provision which is brought to our notice enabling the Revenue to keep refund applications pending, merely because an order passed by the Tribunal has been challenged by the Revenue in further appeals. In the teeth of the clear language of law and there being no interim stay in favour of the Revenue, we find no justification for keeping the refund application either pending or rejecting it with the aforesaid endorsement.

6. In the light of the above discussion, we dispose of this writ petition with a direction to the respondents to consider the refund application in Form-R filed on 2nd September, 2013 and dispose of the same in accordance with law as expeditiously as possible. We grant three months' time to the Revenue for the said purpose. The writ petition is, accordingly, disposed of. No costs.