(2013) 06 MAD CK 0017

In the Madras High Court

Case No : C.M.A. No. 1451 of 2005

The Commissioner of Central Excise	APPELLANT
Vs	
M/s. Thiru Arooran Sugars Limited	RESPONDENT

Date of Decision : 20-06-2013

Acts Referred:
Finance Act, 1994 — Section 70
Finance Act, 2003 — Section 70, 73

Citation : (2013) 23 GSTR 266 : (2014) 33 STR 369 : (2013) 66 VST 503

Hon'ble Judges : K.B.K. Vasuki, J;Chitra Venkataraman, J

Bench : Division Bench

Advocate : M. Santhana Raman, for the Appellant; Mohammed Shaffiq for M/s. R. Karthikeyan, for the Respondent

Judgement

Chitra Venkataraman, J.—The above Civil Miscellaneous Appeal is filed at the instance of the Revenue against the final order No.

844/2004 dated 1.10.2004 passed by the Customs, Excise and Service Tax Appellate Tribunal, Chennai Bench by raising the following substantial

question of law:-

When there is a charging provision under Service Tax Rules in respect of availer of the services of Goods Transport operators and the recovery of

Service Tax has been authorised (Validated) in terms of provisions contained in the Finance Act, 2003 and the said Tax is recoverable from such

person which recovery is only under the authority of law through Section 71A of the Finance Act, 2003, is the Tribunal correct in applying the ratio

of 2004 (93) ECC 224 to the instant case by holding that liability u/s 73 of the Finance Act, 2003 does not cover the case of the assessees on

whom liability is cast u/s 71A of the Finance Act, 2003 and such persons are not liable to pay Tax?.

It is seen from the decision reported in Commissioner of Central Excise, Meerut-II Vs. L.H. Sugar Factories Ltd., the judgment of the Tribunal in

L.H. Sugar Factories Limited and others was affirmed by the Apex Court by holding that the liability to file return on the recipient of goods

transport operator service is only u/s 71-A of the Finance Act; since Section 73 of the Act does not cover the classes of persons coming u/s 71-A

of the Finance Act and it covered those cases falling u/s 70 of the Act, the show cause notices issued u/s 73 of the Act was not maintainable.

2. It may also be noted in the decision reported in Commissioner of Central Excise, Vadodara-I Vs. Gujarat Carbon and Industries Ltd., the Apex

Court once again reiterated the decision of the Apex Court reported in Commissioner of Central Excise, Meerut-II Vs. L.H. Sugar Factories Ltd.,

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3. As far as the present case is concerned, show cause notice u/s 73 of the Act was issued on 19.10.2001. This was issued on the strength of

validation provision on the levy of service tax on the recipient of goods transport operator service. The first Appellate Authority viewed that having

regard to Section 71-A under the Finance Act, 2003 with retrospective effect requiring the assessee like the respondent herein to file return, cases

falling u/s 71-A of the Act was also to be taken under the general provisions of Section 70 of the Finance Act, 1994. Thus, the first Appellate

Authority confirmed the demand. Aggrieved by the same, the assessee went on appeal before the Customs, Excise and Service Tax Appellate

Tribunal. The Tribunal followed the decision of the Customs, Excise and Service Tax Appellate Tribunal, New Delhi in the case of LH Sugar

Factories Limited & OS. v. CCE, Meerut II (2004) (61) RLT 142 wherein the Bench had elaborately dealt with the effect of introduction of

Section 71A in the Finance Act 2003 and also Section 73, as amended by Finance Act, 2003 and allowed the appeal. Thus when the above

decision of the Tribunal in L.H. SUGAR FACTORIES LIMITED was confirmed by the Apex Court, in the decision reported in Commissioner of

Central Excise, Meerut-II Vs. L.H. Sugar Factories Ltd., , and in the subsequent decision reported in Commissioner of Central Excise, Vadodara-

I Vs. Gujarat Carbon and Industries Ltd., the Apex Court followed the said decision, the facts herein being identical, we have no hesitation in

confirming the order of the Tribunal, thereby rejecting the Revenue''s appeal.

4. Even though learned standing counsel for the Revenue pointed out that the Validation Act had not been considered in those judgments, yet, on

facts, we do not find that would make any difference at all since, there were no proceedings prior to issuance of show cause notice dated

19.10.2001 even for application of the validation provisions.

5. Secondly, when Section 71-A made specific provision on the filing of the return by the recipient of the services and effect of it was considered

vis-a-vis in Section 70 and 73, we have no hesitation in rejecting the Revenue''s contention. In the circumstances, the above Civil Miscellaneous

Appeal is dismissed. No costs.

