
(2016) 05 KAR CK 0018

In the Karnataka High Court

Case No : Writ Appeal No. 3853 of 2013 (T-TAR)

Union of India

APPELLANT

Vs

Oracle India Pvt. Ltd.

RESPONDENT

Date of Decision : 31-05-2016

Acts Referred:

Citation : (2016) 338 ELT 641

Hon'ble Judges : Jayant Patel and B. Sreenivase Gowda, JJ.

Bench : Division Bench

Advocate : Shri N.R. Bhaskar, Sr. CGSC and Smt. Manjula K.S, Advocate, for the Appellant; S/Shri G. Shivadass, Smt. Lakshmi Kumaran, Sridharan and Ajay, Advocates, for the Respondent

Final Decision : Disposed Off

Judgement

Jayant Patel, J.—The present appeal is directed against the order dated 18th June, 2013 passed by the learned Single Judge of this Court [2014 (303) E.L.T. 366 (Kar.)], whereby the learned Single Judge set aside the demand notice and further directed the petitioner to furnish bank guarantee and it was also observed that the appeal may be filed against the Order-in-Original No. 554/2013, dated 20th May, 2013.

2. We have heard Ms. Manjula K.S., learned Counsel appearing for the appellants and Mr. G. Shivadass, learned Counsel appearing for the respondent.

3. When we have taken up the matter for final hearing, it has been brought to our notice by the learned Counsel appearing for both the sides that in view of the interim order passed by this Court, the direction issued in Paragraph 3 for return of the amounts by furnishing bank guarantee has not been implemented and further the appeal was preferred by the respondent against the order dated 21st May, 2013, and the matter went up to the Tribunal and as per the order of the Tribunal, the order of demand is set aside and the matter is remanded to the original authority for fresh adjudication in accordance with law. The learned

Counsels further submit that the original authority has further considered the matter after remand and the arguments are also concluded and order is being awaited. It was submitted that against the said Order-in-Original, which may be passed by the authority, there is a right of appeal before the Appellate Authority and thereafter, may be also before the Tribunal. The learned Counsel for the respondent submitted that as per the amendment made, even if the appellant has preferred appeal against the demand confirmed by the order in the original, the requisite amount to be deposited is only 7.5% and therefore, full amount of the demand confirmed cannot be retained by the Department. Whereas, the learned Counsel for the appellants submitted that such stage has not occurred and at this stage, the refund may not be ordered.

4. However, the learned Counsel appearing for both the sides after some deliberations have agreed that if the original authority is allowed to adjudicate the matter and thereafter if the right is made available to the respondent to prefer the appeal and at the stage when the question arises of waiver, all aspects including that of refund of full amount or a part thereof may be examined and till then, if the interim order passed by this Court in the present appeal is continued, the same would not be unacceptable to their respective clients. But it was also submitted that the rights and contentions of both the sides before the Appellate Authority may be kept open.

5. Considering the facts and circumstances that the demand is set aside in the proceedings before the Appellate Authority earlier and also by the Tribunal and the matter is remanded to the original authority and the matter is at large pending before the original authority, we find that the interim order passed by this Court in the present appeal can be continued so far as it relates to refund of the amount as furnishing of the bank guarantee. If the demand (amount) is confirmed, show cause notice is withdrawn, the parties may have right to prefer appeal before the Appellate Authority and at the stage when the question arises for waiver of the demand, if any, the Appellate Authority may be in a better position to examine as to whether the amount of refund exceeding 7.5% of the demand for maintaining the appeal or otherwise and it is only after the finalization of the said amount which may be required to be deposited, the question may be examined for refund of the rest of the amount on appropriate terms and conditions as may be finalised by the Appellate Authority.

6. In view of the aforesaid peculiar facts and circumstances of the case and the subsequent development of the matter, we find that the following order shall meet the ends of justice.

(i) The original authority before whom the matter is pending for adjudication, shall take appropriate decision for confirmation of the demand or for withdrawal of notice or for any appropriate order within a period of three months from the date of receipt of the order of this Court.

(ii) In the event the order is passed against the respondent and any amount of

demand is confirmed, it may be open to the respondent to prefer appeal before the Appellate Authority. In the said appeal, it would also be open to the respondent to move an application for waiver for maintainability of the appeal in accordance with law. If the appeal is preferred and the application is made for waiver, the Appellate Authority shall be at liberty to examine the quantification of the amount to be retained, pending the appeal and the refund of the rest of the amount. It is observed that, at that stage, all contentions of both the sides shall remain open before the Appellate Authority.

7. Until the appropriate order is passed by the Appellate Authority, as referred to herein above, the application for waiver and further consequential order, the interim stay granted by this Court in the present appeal for refund of the amount on condition of furnishing of bank guarantee shall continue to remain in operation. If the appropriate order is passed by the Appellate Authority, as referred to herein above, the rights and contentions of the parties shall stand modified accordingly, subject to the remedy as may be available in law.

8. The present appeal is disposed of in terms of the aforesaid order. No order as to costs.