(2024) 11 CESTAT CK 1299

In the Customs, Excise And Service Tax Appellate, New Delhi

Case No : Service Tax Appeal No. 50071 of 2019

Unique Affordable Homes Pvt Ltd @APPELLANT @Hash Commissioner Of CGST & Central Excise Jaipur I @RESPONDENT

Date of Decision : 28-11-2024

Acts Referred:

Central Excise Act 1994 — Section 37(C)
Finance Act, 1994 — Section 84

Citation : (2024) 11 CESTAT CK 1299

Hon'ble Judges : Dr. Rachna Gupta, Member (J);Hemambika R. Priya, Member (T)

Bench : Division Bench

Advocate : Rahul Lakhwani, Rajeev Kapoor

Final Decision : Dismissed

Judgement

Dr. Rachna Gupta

1. Present appeal has been filed to assail the Order-in-Appeal No. 458/2018 dated 09.10.2018 vide which the Commissioner (Appeals) had rejected the appeal before him, on the ground of limitation without looking into the merits of the appeal.

2. The facts, succinctly, for adjudication of present appeal are that the appellant, M/s Unique Affordable Homes Pvt. Ltd., is the holder of service tax registration being engaged in construction of Residential Complex Services. The department alleged that the appellant has not paid the service tax amounting to Rs. 23,38,673/- during the period of October 2008 to October 2013 in respect of taxable services of Management, Maintenance or Repair Services and has filed returns without declaring the taxable value of those services in there service tax returns (ST-3). Accordingly, vide show cause notice No 1608 dated 16.04.2014 the aforesaid amount of service tax was proposed to be recovered along with, the proportionate interest and appropriate penalties. The said proposal was confirmed vide Order-In-Original (O-I-O) No 122/2016-17 dated 06.12.2016. Being aggrieved the appeal was filed before Commissioner (Appeals). The said

appeal has been rejected on the technical ground of limitation vide the order assailed herein (O-I-A dated 09.10.2018.)

3. We have heard learned counsel Shri Rahul Lakhwani for the appellant and Authorized Representative Shri Rajeev Kapoor for the respondent.

4. Learned Counsel for appellant submitted that appellant is engaged in providing Construction of Residential Complex Service and had collected security deposit amount from customers against Maintenance Corpus Fund for the period in dispute. It is submitted that the Commissioner (Appeals) has wrongly rejected appeal on the ground limitations. The Order-In-Original (O-I-O) dated 08.12.2016, as the Commissioner (Appeals) has grossly erred in not appreciating the order of the High Court of judicature for Rajasthan bench at Jaipur dated 01.06.2017. The Order-In-Appeal is also alleged to be voilative of principal of natural justice as reasonable opportunity of being heard was not given to the appellant. The Commissioner (Appeals) has also grossly erred in not considering 20.06.2017 as the date of service of the impugned order as such the service of O-I-O is in violation of Section of 37(C) of the Central Excise Act 1994. With these submissions the order under challenge is prayed to be set aside and appeal is prayed to be allowed.

5. While rebutting these submissions Learned DR has mentioned that Commissioner (Appeals) has dealt with all the grounds of appeals before him. The findings in "Para 17" of the order under challenge are impressed upon, with the mention that there is not infirmity in rejecting the appeal on the ground of limitation, when the appeal against order dated 06.12.2016 was not filed before Commissioner (Appeals) prior 25.07.2017. Hence, the appeal was filed beyond the period of limitations accordingly, is prayed to be dismissed.

6. Having heard both the parties we observe it to be an admitted as fact, that prior filing the appeal before Commissioner (Appeals) against O-I-O dated 06.12.2016, the appellant had filed a writ petition before Hon'ble High Court of Rajasthan, Jaipur bench. The said petition was decided vide order dated 01.06.2017. Apparently and admittedly, the appeal before Commissioner (Appeals) was filed on 25.07.2017. Thus, it is clear that the appeal was filed after the decision of the Hon'ble High Court of Rajasthan. The said order dated 01.06.2017 is perused. It reads as follows;

"1. By way of this writ petition, the petitioner has challenged the action of the respondents in not serving the Adjudication Order. The matter is adjourned time and again affidavit and reply and rejoinder have been filed.

2. Taking into consideration, the change of office of the respondents, in our opinion, copy of the order is required to be served again to the concerned person who is in-charge of the petitioner-company.

3. We make it clear that for prayer A, B & C, it will be open for the petitioner to agitate this issue before the Appellate Authority. The Appellate Authority will

consider the same on merits.

4. We have no expressed any opinion on merits of the case and we have decided this petition only for the purpose of service of the order.

5. The petition is accordingly disposed off.”

Prayer clauses A. B. C. in the said writ are found recorded in the order under challenge. Prayer clause B reads as follows:

B Direct the Respondent no. 3 to entertain the appeal of the Petitioner B company against the Adjudication order and adjudicate the same on the merits without raising objection of any kind on account of delay in preferring appeal;

The perusal of this clause in light of the above quoted order make its clear the plea of limitations is also kept open to be decided by this Tribunal based on the relevant merits of this prayer along with the remaining two prayers in Clause A & Clause B.

7. To adjudicate the merits of prayer under above clause i.e. as to whether the appeal before Commissioner (Appeals) was filed beyond period of limitation, as has been held in the order under challenge. We record the Chronology of events as follows:

16.04.2014

Show Cause Notice dated 16.04.2014 was issued against the appellant demanding service tax for the Impugned Period

06.12.2016

O-I-O dated 06.12.2016 Passed

03.04.2017

Appellant received a call from the office of the Superintendent, ST Range-II of ST Division-II jaipur enquiring about the status of the appeal, if any filed against the Impugned O-I-O passed Thereafter, Appellant immediately personally visited and enquired from the office of Ld. Joint Commissioner about the status of the Impugned OIO.

14.04.2017

Appellant sent letter to the Additional Commissioner.

18.04.2017

The authorized representative of the Appellant once again visited the office of the Additional Commissioner in person for enquiring the status of the hearing and requesting the copy of the order

19.04.2017

Demand Notice dated 12.04.2017 was served on the Appellant requiring the Appellant to deposit the dues confirmed by the impugned OIO dated 06.12.2016 which was received on 19.04.2017 (Annexure-E)

04.05.2017

Sum of Rs. 1,75,401/- deposited as Pre-deposit for filing the appeal by the Appellant

10.05.2017

D.B. Civil Writ Petition No. 7268/2017 filed by the Appellant the Writ petition was allowed and HC Order was passed (Annexure-F)

20.06.2017

Certified copy of Impugned OIO was served to the Appellant

25.07.2017

Appeal against the Impugned OIO was filed

09.10.2018

Impugned OIA passed

Perusal of above table makes it abundantly clear that the amount of pre-deposit for filing the appeal before Commissioner (Appeals) was deposited on dated 04.05.2017 hence, it becomes clear that the appellant had got knowledge about order of original adjudicating authority confirming the proposed demands against the appellant prior May 04, 2017. Resultantly, the date on which the appellant received the certified copy i.e. on 20.06.2017 cannot be held to be the date of knowledge. Appellant acquired Knowledge of O-I-O much prior to that it is apparent on record that certified copy of O-I-O was provided to appellant on 20.06.2017 pursuant to the direction of Hon’ble Court of Rajasthan in its order dated 01.06.2017.

8. As per section 84 of Finance Act 1994 the appeal before Commissioner (Appeals) has to be presented within two months from the date of receipt of the order of original adjudicating authority in the present case. It has been recorded by Commissioner (Appeals) in Para 17 of the impugned order that from the document collected from Assistant Commissioner (Law) CGST Commissionerate Jaipur, its stands revealed that the O-I-O was dispatched to the appellant by registered AD and that the same was duly received by the appellant as the acknowledgement duly stamped by the appellant was being received in the concerned Commissionerate. We hold the receipt of stamed AD is the sufficient compliance of Section 37(C) of the Central Excise Act 1994. Though the learned counsel for appellant has taken the plea that this fact was brought to the notice Hon’ble High Court as well still the writ petition has been allowed. However, we are not convinced with the said submission as the copy of writ petition is not placed on record. Secondly, the High Court has kept open the prayer at clause B

(as quoted above) of the writ petition to be decided on its own merits along with, the prayers at clause A and C thereof. Clause B is with respect to the plea of limitation. The above discussion has dealt with the merits vis-a-vis player at clause B of the writ.

9. In light of the said discussion, we hold that Commissioner (Appeals) has committed no error while adjudicating the plea of limitation against appellant based on the document (Revised AD registered part) before him. Resultantly, we have no reason to differ with the findings in the order under challenge. The order is therefore, upheld. Consequent thereto, the appeal is dismissed.

(pronounced in the open Court on 28/11/2024)