IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 12.06.2015

CORAM

THE HONOURABLE MR. JUSTICE R.SUDHAKAR
AND
THE HONOURABLE MS. JUSTICE K.B.K.VASUKI

C.M.A. NO.1085 OF 2015
AND
M.P. NO.1 OF 2015

M/s.MCV & Co.,
131-B, Vridhachalam Main Road,
Mandharakuppam, Neyveli - 607 802
Tamil Nadu. .. Appellant

- Vs -

1. The Customs, Excise & Service Tax Appellate Tribunal
Shastri Bhavan Annexe,
Chennai.

2. The Commissioner of Central Excise
Puducherry Commissionerate. .. Respondents

Appeal filed under Section 35-G of the Central Excise Act against the order dated 25.08.2014 passed by the Customs, Excise & Service Tax Appellate Tribunal, South Zonal Bench, Chennai, made in Final Order No.40700/2014 (Appeal No.ST/467/2012). against the Order of the Commissioner of Central Excise (Appeals) made in appeal No.32/12(PST) dated 1.5.2012 against the order of the Additional Commissioner of Central Excise made in C.No.V/ST/15/253/2008-ST.Adj dated 18.12.2009.

For Appellant : Mr. K.Jayachandran

For Respondents : Mr. A.P.Srinivas - R2

JUDGMENT

(DELIVERED BY R.SUDHAKAR, J.)

Aggrieved by the common order of the Tribunal in remanding the matters back to the adjudicating authority in the appeal filed by the Revenue, the appellant/assessee is before this Court by filing the present appeal raising the following questions of law :-

"i) Whether in the absence of any request from appellant or from the Dept., can the Tribunal remand the matter on the ground of violation of principles of natural justice?

ii) Whether the finding of the Tribunal that demand merely on the ground of receipt of payments from NLC by the appellant be a valid for sustaining the demand by concluding that the Dept. had discharged their burden without a finding about the proper classification of service and the category of service rendered by the appellant?

iii) Whether the Tribunal is justified in ignoring the decisions of the co-ordinate Bench reported in 2009 (13) STR 542, 2011 (22) STR 571 for the legal issue that "non-specification" of classification/category of services in the show cause notice and in the adjudication order is fatal?

iv) Whether non mentioning of specific allegations and details in the show cause notice or in the adjudication order vitiates the entire proceedings because while the Dept., exercising power under fiscal statute must bring some one under the tax net, required to render specific finding as to the liability and demand cannot be on surmises and conjectures?"

2. It is submitted by the learned counsel appearing for the appellant that the issue involved in this appeal is arising out of the common order passed by the Tribunal. The said common order of the Tribunal has been challenged before this Court in a batch of appeals. This Court vide order dated 30.04.2015 in C.M.A.Nos.764 to 768 of 2015, allowed the appeals by way of remand, holding as follows:

"16. This Court, therefore, is of the considered view that without going into these issues, mere remanding the matter back and asking the adjudicating authority to re-adjudicate the matter after giving break-up of the details to the assessees/appellants will not suffice. The issues raised by the appellants/assessees and answered by the Commissioner (Appeals) in their favour has to be considered by the Tribunal on its own merits and there being no finding on the issues in the manner in which the plea has been taken by the present appellants, who were successful before the Commissioner (Appeals), we find that the order of the Tribunal cannot be sustained on an issue of open remand.

17. The arguments of the learned standing counsel for the Department that all the issues can be trashed out before the adjudicating authority does not find

favour with this Court as the Department cannot be allowed to fill up the lacunae in the show cause notices on the basis of an open remand as alleged by appellants.

18. Therefore, this Court is of the considered view that the matter has to be remitted back to the Tribunal to consider the facts, as narrated above, as has been presented by the Department and contested by the appellants/assessees in the proceedings before the lower authorities as well.

19. Accordingly, this Court sets aside the order of the Tribunal and remands the matter back to the Tribunal to answer the issues in relation to the findings of the Commissioner (Appeals) which was under challenge before the Tribunal in the appeals. All the appeals are allowed by way of remand. Consequently, connected miscellaneous petitions are closed. However, in the circumstances of the case, there shall be no order as to costs."

3. Following the above-said decision of this Court, this Civil Miscellaneous Appeal is allowed in the same terms. No costs. Consequently, M.P.No.1 of 2015 is closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

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To

1. The Customs, Excise & Service Tax Appellate Tribunal,
   Shastri Bhavan Annexe, Chennai.

2. The Commissioner of Central Excise
   Puducherry Commissionerate.

3.The Commissioner of Central Excise(Appeals)
26/1 Mahathama Gandhi Road, Chennai-34.

4.The Additional Commissioner of Central Excise Office of the Commissioner of Central Excise, Government Avenue(Beach Road) Puducherry 65 001.

1 cc to Mr. A.P.Srinivas, Advocate Sr.No.29303/2015

C.M.A. NO.1085 OF 2015

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