

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 17.06.2015

CORAM

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

C.M.A. NO.1189 OF 2015

AND

M.P. NO.1 OF 2015

C.Vadivelu
No.D-9, R.N.Tagore Salai,
Block 13, Neyveli, Cuddalore - 607 803.

... Appellant

- Vs -

1. The Customs, Excise & Service
Tax Appellate Tribunal
Shastri Bhavan Annexe,
Chennai.
2. The Commissioner of Central Excise & Service Tax
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.40749/2014 (Appeal No.ST/194/2010).

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 the appellant rendered taxable service and was liable to pay service tax, merely on the ground of receipt of payments from NLC?

iii) Whether in the absence of proposals to classify the activities of the appellant, when the demand of service tax was dropped, the 1st respondent was justified in remanding the matter for fresh decision?

iv) Whether the 1st respondent 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 would be fatal to the proceedings?

v) Whether the 1st respondent Tribunal is justified in ignoring the decision of the Hon'ble Madras High Court reported in 201 (23) STR 7 (Mad), wherein it was held that Tax liability-Dept. Exercising power under fiscal statute while passing order bringing someone under tax net, is required to render specific finding as to liability and demand cannot be on surmises and conjectures, especially when the demand of service tax was dropped by the 2nd respondent for the sole reason of non proposal of the classification of service?"

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/assesseees 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(CO)

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Sub Assistant Registrar

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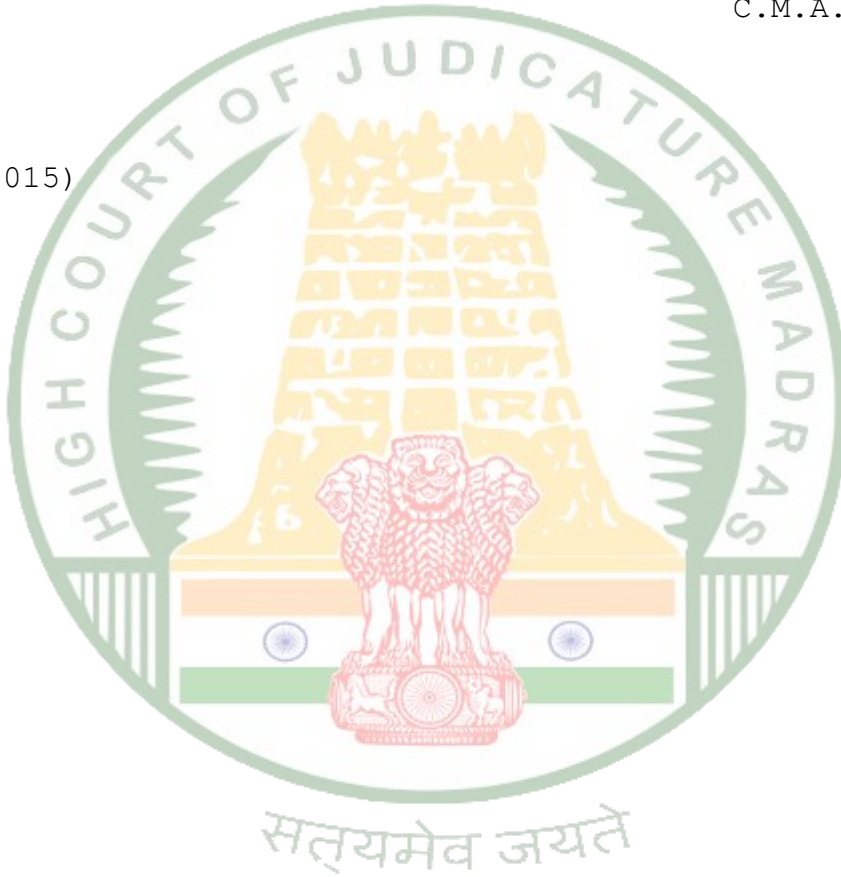
1. The Customs, Excise & Service Tax Appellate Tribunal,
Shastri Bhavan Annexe,
Chennai.

2. The Commissioner of Central Excise
Puducherry Commissionerate.
3. The Custom, Excise and Service Tax Appellate Tribunal,
South Zone Bench, Chennai.

+1cc to Mr.K.Jayachandran, Advocate, S.R.No.29681
+1cc to Mr.J.ShankarRaman, Advocate, S.R.No.29722

C.M.A. NO.1189 OF 2015
and
M.P.No.1 of 2015

TEJ(CO)
CA(26/06/2015)



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