In the High Court of Judicature at Madras

Dated : 03.08.2015

Coram :-

THE HONOURABLE MR.JUSTICE V.RAMASUBRAMANIAN,J

and
THE HONOURABLE MR.JUSTICE T.MATHIVANAN,J

C.M.A.No.1656 of 2015
and
M.P.No.1 of 2015

V.Sathyamurthy and Co.
40 D Surya Garden
Trichy Road
Namakkal 636 001

Appellant/Appellant

v.

1. Customs, Excise and Service Tax
Appellate Tribunal (Southern Bench)
Shastri Bhavan, Annexe Building
I Floor, Haddows Road
Chennai 600 006

2. The Commissioner of Service Tax
No.1, Folks Compound
Annaimedu Road
Salem 636 001

Respondents/Respondents

Civil Miscellaneous Appeal filed under section 35 G of the Central Excise Act, 1944 against the order made in Misc.Order No.40868 of 2015 dated 03.06.2015 bearing Application No.ST/S/41303/2014 in Appeal No.ST/41067/2014-DB passed by the 1st respondent directing the appellant to pre-deposit a sum of Rs.2 crores within a period of 8 weeks from the date of receipt of the order.

For Appellant : Mr.P.J.Rishikesh

For Respondents: Mr.V.Sundareswaran, SPC

JUDGMENT

(Judgment of the Court was delivered by V.Ramasubramanian,J.))

This appeal arises out of an order passed by the Customs, Excise and Service Tax Appellate Tribunal, directing the appellant to make a pre-deposit of Rs.2 crores, as a condition for entertaining the appeal.

2. Heard Mr.P.J.Rishikesh, learned counsel for the appellant. Mr.V.Sundareswaran, learned Standing Panel Counsel takes notice for the respondents.

3. The appellant is a partnership firm carrying on business as Civil Engineering Contractors. They have executed several projects for the Tamil Nadu Slum Clearance Board, Tamil Nadu Housing Board and Tamil Nadu Police Housing Corporation Limited.

4. On 25.02.2011, the Officers attached to the Preventive Unit, Salem Commissionerate of the department of Service Tax, inspected the premises of the appellant and recorded a statement of the Managing Partner. Thereafter, a show cause notice dated 19.10.2011 was issued, contending that the appellant had rendered services, which attract payment of service tax under various sub sections of Section 65. The total service tax liability of the appellant was quantified at Rs.7,71,71,776/- for the period from 01.04.2006 to 31.04.2011.

5. Though the appellant was granted an opportunity of personal hearing, the appellant appears to have failed to appear for all the hearings. Therefore, an ex-parte order was passed on 14.02.2014.

6. As against the said order, an appeal was filed. But, the appeal was dismissed. Therefore, the appellant filed an appeal before the Tribunal on 20.05.2014 with two applications, one for stay and one for waiver of pre-deposit condition.

7. Even before the Tribunal, the counsel for the appellant did not appear. Therefore the Tribunal passed an order directing the appellant to deposit Rs.4 crores as pre-condition for entertaining the appeal. The appellant, thereafter filed an appeal in C.M.A.No.300 of 2015 before this Court. By an order dated 26.02.2015, this court allowed the appeal and remanded the matter to the Tribunal to give one opportunity to the appellant to appear before the Tribunal.

8. After the order of remand, the counsel for the appellant appeared before the Tribunal and after hearing the arguments, the Tribunal passed a fresh order on 03.06.2015, directing the appellant to make a pre-deposit of Rs.2 crores. This order further directed the appellant to pay only the balance amount after adjusting the deposits that he had earlier made. The appellant had deposited a sum of Rs.48,60,872/- on various dates. They have also deposited another sum of Rs.50,00,000/- to show their bona-fides before the miscellaneous petition was ordered by the Tribunal. The net result is that the appellant has deposited more than about Rs.98.60 lakhs. As a consequence of the order passed on 03.06.2015, the appellant is to make payment of the balance amount of little over 1.10 crores. Aggrieved by the said order, the appellant is before us.

9. The total liability determined by the original order was Rs.7,71,71,776/-. Out of the said amount, the appellant has now deposited nearly Rs.98.60 lakhs. Therefore, the only issue to be considered is as to whether the appellant should be made to comply with the order of the Tribunal by depositing Rs.1 crore more or not.

10. A perusal of the order of the Tribunal shows that the Tribunal had relied upon its earlier order dated 31.12.2014, to come to the conclusion that the balance of convenience was in favour of the revenue. But, the Tribunal has omitted to see that the earlier order dated 31.12.2014 had actually been set aside by this Court by the order dated 26.02.2015. Once the order is set aside and the matter is remanded, the Tribunal was obliged to look into the issue afresh. It is relevant to note that the earlier order dated 31.12.2014 was passed, in the absence of the counsel for the appellant. Therefore, placing reliance upon the earlier order was erroneous.

11. In view of the above, the appeal is allowed, the order of the Tribunal is set aside.

12. There are two courses of action open to us viz., either to direct the Tribunal to consider all the aspects such as hardship, balance of convenience etc. or to direct the Tribunal to dispose of the appeal itself. We prefer the second course of action in view of the fact that a sum of Rs.98.60 lakhs had already been deposited by the appellant and and this is the second order in question even at the threshold.

13. Therefore, we direct the Tribunal to take up the appeal and hear it and dispose it of on merits, within a period of six months from the date of receipt of a copy of this order. It is made clear that in order to make the total amount deposited by the appellant to be rounded off to Rs.1 crore, the appellant shall pay a sum of Rs.1,40,000/- within a period of two weeks from the date of receipt of a copy of this order.

No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

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   I Floor, Haddows Road
   Chennai 600 006

2. The Commissioner of Service Tax
   No.1, Folks Compound
   Annaimedu Road
   Salem 636 001

+1cc to Mr.V. Sundareswaran, Advocate, S.R.No.40893
+1cc to Mr.G.K. Muthukumar, Advocate, S.R.No.39626

JSV(CO)
EU(10/08/2015)