

In the High Court of Judicature at Madras

Date : 25.06.2015

Coram :

The Hon'ble Mr. Justice R. Sudhakar
and
The Hon'ble Ms. Justice K.B.K.Vasuki

C.M.A. No. 1735 of 2010

The Commissioner of Central Excise
and Service Tax
1 Williams Road, Cantonment
Tiruchirapalli - 620 001. ... Appellant

-vs-

M/s. Kannappa Corporation
80 Tanjore Road
Trichy - 620 008. ... Respondent

Appeal filed under Section 35-G of the Central Excise Act, 1944 against the order dated 09.10.2009 passed by the Customs, Excise and Service Tax Appellate Tribunal, Chennai Bench, Chennai, made in Final Order No. 1420/2009.

For Appellant : Mr. T. Chandrasekaran

For Respondent : Mr. J. Shankar Raman

J U D G M E N T

(Judgment of the Court was
delivered by R. Sudhakar, J.)

Aggrieved by the order passed by the Tribunal in allowing the appeal filed by the assessee, the Revenue/appellant is before this Court by filing the present appeal. This appeal was admitted by this Court, on 16.07.2010, on the following substantial questions of law :-

" 1. Whether the Hon'ble CESTAT is right in setting aside the penalties imposed under Sections 78, 76 and 77 of the Finance Act, 1994 by the Commissioner in exercise of powers u/s 84 of the Act, especially when suppression of the facts with intent to evade service tax stands proved against the respondents and when the Hon'ble CESTAT has not refuted the intention to evade payment of service tax or discussed any

evidence to the contrary in the impugned final order ?

2. Whether the Hon'ble CESTAT is right in setting aside the penalties by holding that M/s. Kannappa Corporation, Trichy, were not required to pay service tax when it has been admitted by the assessee that they had rendered the cargo handling services and were liable for paying service tax on the said service, especially when they had not agitated the order of the Original Authority confirming the demand of service tax on the cargo handling service rendered by them ?

3. Whether the Hon'ble CESTAT is right in setting aside the penalties in a case where the intention to evade payment of service tax was established and thereby obviated the applicability of waiver u/s 80 of the Finance Act, 1994, when no reasonable cause could be proved when intention to evade service tax has been proved ?

4. Whether the Hon'ble CESTAT is right in relying upon 2008-TIOL-282-CESTAT-Delhi (M/s. Jagdeep Singh Saluja vs. CCE) and the Board circular in F. No.B11/1/2002-TRU dated 01.08.2002 which are inapplicable to the facts of this case ?"

2. The respondent / assessee is a proprietary concern engaged in the business of providing services in handling, storage and transportation of fertilizers of M/s. Oswal Chemicals and Fertilizers Limited, who are having their factory at Paradeep, Orissa and their head office at New Delhi. On the basis of information received that the assessee was not discharging appropriate Service Tax on the remuneration received towards the services provided by the assessee to M/s. Oswal Chemicals and Fertilizers Ltd. for the purpose of handling despatches of Urea / DAP / NKP by railways, the officers attached to the Madurai Regional Unit of the Directorate General of Central Excise Intelligence, visited the business premises of the assessee and found that the assessee had registered for the payment of service tax under the category of Storage and Warehousing only. It was also found on verification of records that the assessee had not paid service tax on the service charges collected from M/s. Oswal Chemicals and Fertilizers Ltd. towards handling of the fertilizer manufactured and cleared by them during the years 2003-2004 and 2004-2005. After due process of law, the Order in Original No:04/2007-Service Tax dated 29.03.2007 came to be passed demanding a sum of Rs.1,49,170/- (service tax of Rs.1,48,513/- + Ed. Cess of Rs.657/-) under Section 73 (2) of Chapter V of Finance Act, 1994. The Original Authority also appropriated the service tax amount of Rs. 1,47,816/- already paid by the assessee and demanded the balance sum of Rs.1,354/-.

3. Subsequently, the Commissioner of Central Excise, Trichy, issued a Notice on 12.10.2007 in C. No: V/ST/15/35/2007-Cx.Adj. as

to why penalty should not be imposed under Sections 76, 77 & 78 of the Finance Act, 1994 and the Order of the Original authority should not be modified accordingly. Thereafter, the revisional order came to be passed by the Commissioner of Central Excise, Trichy, vide order dated 13.12.2007, imposing penalty of Rs. 200/- per day under section 76 of Finance Act, 1994 and also a penalty of Rs.1,000/- under Section 77 of the Finance Act, 1994. The Commissioner also imposed a penalty of Rs. 1,49,170/- on the assessee under Section 78 of the Finance Act, 1994.

4. Against the said order, the respondent/assessee preferred appeal to the Tribunal. The Tribunal, on considering the facts of the case, allowed the appeal filed by the assessee, against which the appellant/Department has preferred the present appeal.

5. Learned counsel appearing for the respondent/assessee raised a preliminary objection as to the maintainability of the case of the appellant contending that the appellant ought not to have filed the appeal in view of the litigation policy of the Government issued by the Ministry of Finance, Department of Revenue, Central Board of Excise & Customs vide Instructions dated 20.10.2010 in F.No.390/Misc./163/2010-JC, wherein the following instruction has been issued :-

"5. The Board has decided that appeals in the Tribunal shall not be filed where the duty involved or the total revenue including fine and penalty is Rs.1 Lakh and below. Similarly, in the case of High Courts, appeals should not be filed in cases where the duty involved or total revenue including fine or penalty is Rs.2 Lakhs and below. While deciding the thresholds mentioned above the duty involved shall be the decisive element. For example, in a case involving duty of Rs.1 Lakh with mandatory penalty of Rs.1 Lakh besides any other penalty imposed under the relevant provisions of Law, no appeal shall henceforth be filed in the Tribunal as the duty involved is within the monetary limit of Rs.1 Lakh. Similarly, if the duty involved in a case is Rs.2 Lakhs with equal mandatory penalty and any other penalty imposed under the Law in force at the relevant time, no appeal shall be filed before the High Court."

6. It is contended by the learned counsel for the respondent that in view of the above instruction, for preferring an appeal, monetary limit is fixed and only if the monetary limit exceeds Rs.2 Lakhs, appeal can be filed. Since the monetary limit in the present case, even as per the order of the Commissioner (Appeals) is well within the limit of Rs.2 Lakhs, the present appeal, filed by the Department, is not maintainable.

7. Learned standing counsel appearing for the Department submitted that the appeal was admitted on 25.3.2010 and the National Litigation Policy of the Government was issued by the Ministry of Finance, Department of Revenue, Central Board of Excise & Customs vide Instructions dated 20.10.2010 in F.No.390/Misc./163/2010-JC and, therefore, there was no bar on the appellant/Department in filing the appeal.

8. Heard the learned standing counsel appearing for the appellant/Department and the learned counsel appearing for the respondent/assessee and perused the materials available on record.

9. As submitted by the learned standing counsel for the Department, the National Litigation Policy was issued on 20.10.2010 while the appeal was admitted on 25.3.2010. Therefore, there was nothing wrong in the Department filing the appeal. However, it is to be pointed out that the main reason for bringing into effect the National Litigation Policy is to reduce Government litigation so that the Government ceases to be a compulsive litigant. The purpose underlying this Policy is to ensure that valuable time of the Courts is spent in resolving pending cases and in bringing down the average pendency time in the Courts and to achieve this, the Government should become an "efficient" and "responsible" litigant. With the above object in mind, the National Litigation Policy was formulated and issued. This Court is also conscious of the fact that the appeal has been filed well before the issuance of the National Litigation Policy. However, the said aspect does not preclude the Court from giving retrospective effect to the Policy, in certain circumstances, keeping in mind the laudable object behind its issuance. This Court is also conscious of the necessity to bring down the average pendency time in the Courts so that precious judicial time does not get wasted. With the above aspect in mind, this Court proceeds to analyse the present case on hand.

10. Even though this appeal is filed to consider the above question of law, referred to supra, we are not inclined to entertain this appeal in view of the preliminary objection made by the learned counsel for the respondent that the monetary limit to prefer an appeal is pegged at Rs.2,00,000/- by the litigation policy of the Government issued by the Ministry of Finance, Department of Revenue, Central Board of Excise & Customs vide Instructions dated 20.10.2010 in F.No.390/Misc./163/2010-JC.

11. It is seen from the records that the revisional order came to be passed by the Commissioner of Central Excise, Trichy, vide order dated 13.12.2007, imposing penalty of Rs. 200/- per day under section 76 of Finance Act, 1994 and also a penalty of Rs.1,000/- under Section 77 of the Finance Act, 1994. The Commissioner also imposed a penalty of Rs. 1,49,170/- on the assessee under Section 78 of the Finance Act, 1994. Therefore, it is very clear from the records that the monetary limit having been fixed at Rs.2 Lakhs, even as per the order of the Revisional authority, the interest and penalty being less than Rs.2 Lakhs, the appeal is not maintainable.

12. The above said circular issued by the Board is squarely applicable to the facts of the present case and, therefore, this Court is not inclined to entertain this appeal. Accordingly, without going into the merits of the questions of law raised, in the light of the Board's circular mentioned supra, this appeal is dismissed as not maintainable. However, there shall be no order as to the costs.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

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To

1.The Customs Excise and Service Tax Appellate Tribunal
Chennai Bench, Chennai

2.The Commissioner of Central Excise
and Service Tax

1 Williams Road, Cantonment
Tiruchirapalli - 620 001.

1 cc to Mr.B.Sathish Sundar , Advocate Sr.No.30148

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