IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE
OF ANDHRA PRADESH
(Special Original Jurisdiction)

PRESENT

THE HON'BLE THE
CHIEF JUSTICE SRI KALYAN JYOTI SENGUPTA
AND
THE HON'BLE SRI JUSTICE SANJAY KUMAR

WRIT PETITION NO.25709 OF 2014

DATED: 20-01-2015

Between:

Sri, Kolli Venkata Mohan Rao

.. Petitioner

And

Commissioner of Customs, Central
Excise & Service Tax, Visakhapatnam-1
and another

.. Respondents

THE HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI SENGUPTA
AND
THE HON'BLE SRI JUSTICE SANJAY KUMAR

WRIT PETITION NO.25709 OF 2014

ORDER: (per Hon'ble Sri Justice Sanjay Kumar)

The petitioner is aggrieved by the Order dated 05.06.2014 passed by the Joint Commissioner, Office of the Commissioner of Central Excise, Customs & Service Tax, Visakhapatnam-I Commissionerate, refusing to exercise power under Section 74(2) of the Finance Act, 1994, for rectification of an alleged mistake committed by the petitioner.

The Revenue initiated proceedings against the petitioner for collection of service tax. The petitioner claims that, by inadvertence and due to a typographical error, the amount was shown as Rs.41,14,69,442/- instead of Rs.4,14,69,442/- in his communications with the Revenue. This alleged error was not noticed by the petitioner till the Order-in-Original, assessing his service tax liability at Rs.59,02,61,437/-, was subjected to appeal before the Customs, Excise and Service Tax Appellate Tribunal, Bengaluru. It is also an admitted fact that the Tribunal passed orders for pre-deposit and the said orders were the subject matter of proceedings before this Court and thereafter, the Supreme Court.

While so, the petitioner submitted letter dated 14.10.2009 invoking the provisions of Section 74(2) of the Finance Act, 1994, for rectification of the alleged typographical error, whereby the amount of Rs.4,14,69,442/- was wrongly shown as

Rs.41,14,69,442/-. This request of the petitioner was however turned down by the Revenue by the impugned order dated 05.06.2014. Perusal thereof reflects that the Revenue rejected the rectification application of the petitioner on the short ground that the matter was under consideration before the Tribunal and therefore the provisions of Section 74 were not available at this stage.

Section 74 of the Finance Act, 1994 reads as under:

"74. Rectification of mistake.—

(1) With a view to rectifying any mistake apparent from the record, the [Central Excise Officer] who passed any order under the provisions of this Chapter may, within two years of the date on which such order was passed, amend the order.

(2) Where any matter has been considered and decided in any proceeding by way of appeal or revision relating to an order referred to in sub-section (1), the [Central Excise Officer] passing such order may, notwithstanding anything contained in any law for the time being in force, amend the order under that sub-section in relation to any matter other than the matter which has been so considered and decided.

(3) Subject to the other provisions of this section, the [Central Excise Officer] concerned:

(a) may make an amendment under sub-section (1) of his own motion; or

(b) shall make such amendment if any mistake is brought to his notice by the assessee or the [Commissioner] of Central Excise or the [Commissioner] of Central Excise (Appeals)."

As per the above statutory provision, the power of rectification is available to the original authority as regards any issue, as long as it has not been considered and decided in appeal or revision. In so far as the quantum of service tax payable by the petitioner is concerned, his appeal before the Tribunal is still pending consideration. The issue is therefore still open and it has not yet been considered and decided. In that view of the matter, the understanding of the Revenue that the power of rectification of a mistake under Section 74(2) of the Finance Act, 1994 cannot be exercised during the pendency of the appeal before the Tribunal cannot be countenanced. The Order dated 05.06.2014 holding to this effect is unsustainable and is therefore set aside.

There shall be a consequential direction to the respondents to consider the application of the petitioner for rectification of the mistake, under Section 74(2) of the Finance Act, 1994, on its own merits in accordance with law and pass a reasoned order thereon. An opportunity shall be afforded to the petitioner to make good his claim of the alleged typographical error. The entire exercise shall be completed within eight weeks from the date of receipt of a copy of this order.

The writ petition is accordingly allowed. Pending miscellaneous petitions, if any, shall stand closed. No order as to costs.

K.J. SENGUPTA, CJ

SANJAY KUMAR, J

20-01-2015
Svv