

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

STA No.06 of 2015

Reserved on: 21.04.2015

Date of decision: 29.04.2015

Rohan & Rajdeep Infrastructure Pvt. Ltd.

....Appellant

Versus

Commissioner, Central Excise & Service Tax, Ludhiana Commissionerate

.....Respondent

**CORAM: HON'BLE MR.JUSTICE S.J.VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR.JUSTICE G.S.SANDHAWALIA**

Present: Mr.P.K.Sahu, Advocate, for the appellant.

Mr.Sunish Bindlish, Advocate, for the respondent.

G.S.Sandhawalia J.

The appeal, filed under Section 35 G of the Central Excise Act, 1944 (for short, the 'Act') read with Section 83 of the Finance Act, 1994 (for short, the 'Finance Act'), seeks setting aside the order dated 28.11.2014 (Annexure A-1) and 13.11.2013 (Annexure A-2), passed by the Customs, Excise & Service Tax Appellate Tribunal, New Delhi (for short, the 'Tribunal'). Vide the first order, the Tribunal had granted waiver of the pre-deposit and stay of further proceedings, for realisation of the adjudicated liability subject to the deposit of the service tax component of ₹1,70,91,927/- plus proportionate interest, excluding the quantum of penalty in total. The said order was sought to be modified, which application was dismissed vide the second order dated 28.11.2014.

2. The appeal is admitted on the following question of law which has been sought to be raised, apart from other questions:

“Whether, on the facts and in the circumstances of the case, the Hon'ble CESTAT is correct in dismissing the application for modification of the stay order dated 13.11.2013 and directing the Appellant to make pre-deposit of entire amount of service tax of Rs.170,91,927 plus the proportionate interest, when a coordinate bench (in which the Technical Member is common) in a similar case of *Prem Kumar Maini* has waived the requirement pre-deposit of the entire demand? ”

3. The admitted facts, as per the case of the appellant, is that it is registered with the Service Tax Department under the taxable category of commercial and industrial construction services and has service tax registration number and it is regularly filing service tax returns. The appellant, for the execution of the infrastructure project, which was awarded by the Punjab Infrastructure Development Board (PIDB) and the Department of Transport, Government of Punjab had entered into a concession agreement to modernise and develop a bus terminus situated on GT Road, Amritsar. The appellant was to be compensated for the expenses incurred towards the execution of the contract by way of granting rights to collect 'Bus Adda Fees' from the Punjab State Transport Buses, using the bus terminus, as per the concession agreement, towards the costs of investing its own funds. The appellant had collected the said fees from October, 2006 to September, 2011 to the tune of ₹15,22,80,736/- from various bus operators.

4. A show cause notice dated 11.04.2012 (Annexure A-5) was issued by the Revenue wherein the provisions of the Finance Act read with Rules 4 to 7 of the Service Tax Rules, 1994 were held to be violated. The appellant submitted the reply on 21.06.2012 (Annexure A-6) wherein it took the plea that the 'Adda Fees' or user charges were collected for the recovery of cost of construction and maintenance and the activity fell under 'Commercial or Industrial Construction', which is exempted from the levy of service tax.

5. The adjudicating authority, vide order date 19.10.2012 (Annexure A-7), came to the conclusion that the 'Adda Fees' has been charged as per the agreement, from various bus operators and transporters, in lieu of providing various facilities of embarking/disembarking the passengers. It was, accordingly, held that the activities carried out by the appellant were not taxable, in such circumstances. It was also noticed that the parking facilities of buses and other vehicles had been done on the open land and parking fees was charged on the basis of time duration for which the vehicles were parked and accordingly, the demand of service tax was confirmed along with interest, as provided under Section 73(1) of the Act read with Section 75 of the Finance Act along with penalty under Sections 76, 77 and 78 of the Act, by excluding the period of limitation.

6. The appellant filed an appeal before the Tribunal along with the stay application, which was decided on 13.11.2013, by holding that under Section 65 (104c) of the Act, taxable services were being rendered. The Tribunal, however, came to the conclusion that whether the extended period of limitation was lawfully invoked was an issue which was to be decided at the time of final hearing of the appeal as it was the case of the appellant that relevant information was being provided in May, 2009, pursuant to the notice issued on 19.03.2009. Accordingly, the proportionate penalty under Section 78 imposed amounting to ₹1,70,91,927/- was waived and the balance amount was to be deposited by 16.01.2014.

7. The appellant, instead of depositing the amount, filed an application a month later, seeking review of the order, mainly on the ground that vide order 18.01.2013, in a similar case in **Prem Kumar Maini Vs. CCE, Chandigarh-II 2013 (31) STR 442**, the Tribunal had granted full waiver of pre-deposit. The application was dismissed by the Tribunal vide the impugned order dated

28.11.2014 on the ground that the 'Adda Fees' in the said case was statutory fees, collected as per the directions of State of Punjab and therefore, could not be held to be at par with the fees which was being collected as concessionaire arrangement. A similar reliance was placed upon the judgment of the Tribunal rendered in **IDAA Infrastructure Pvt.Ltd. Vs. CST, Mumbai 2014 (34) STR 87**, wherein it was held that the circular, which was the subject matter of consideration in the said appeal, had clarified that there was no liability to pay service tax on the toll charges collected by the appellants. Accordingly, the review application was dismissed, which is now subject matter of the present appeal.

8. Counsel for the appellant has vehemently submitted that in similar circumstances, the Technical Member of the Tribunal was common and was also part of the Bench who had decided the issue in the case of **Prem Kumar Maini** (supra) and the Tribunal had granted the relief in identical background and thus, it was not justified in dismissing the application for review.

9. Counsel for the Revenue, on the other hand, justified the order of the Tribunal on the ground that there was no illegality or infirmity in the earlier order dated 13.11.2013 and the question for reviewing the order did not arise. Secondly, it was submitted that it was not the case of the appellant that the deposit of the service tax would cause any undue hardship to it and the interest of the Revenue had also to be safeguarded and the benefit of exemption or the penalty aspect of the same amount had also been noted in the order dated 13.11.2013 and therefore, there was no scope for interference.

10. After hearing counsel for the parties, we are of the opinion that the question of law is liable to be decided against the appellant. As noticed, the appellant is not similarly placed as in the case of **Prem Kumar Maini** (supra). In the present case, the appellant is collecting the amount on the basis of an

agreement, *inter se*, in lieu of the costs incurred in the construction of the bus terminus and is also levying charges on various accounts on the buses which are entering the said terminus. The amounts which are being collected are *prima facie* on the basis of a contractual obligation whereas in the case which is being relied upon, there is a difference and the stay was granted on the ground that it was a statutory fees which was being collected. It was, in such circumstances, the discretion has been exercised in favour of the appellant therein and merely because the words used are similar, namely, the 'Adda Fees', would not be a ground to grant the benefit of exemption from pre-deposit, as has been rightly argued by counsel for the Revenue. The Tribunal has rightly distinguished the case and secondly, the appellant is not alleged to be suffering from any undue hardship, as such. The discretion which has, thus, been exercised by the Tribunal in directing only payment of service tax demand besides remittance of interest, cannot be said to be unjustified, in any manner and the interest of the Revenue has also been protected by directing the deposit of the taxable amount. The initial order was passed on 13.11.2013 and the modification/review could not have been, thus, prayed for, in the absence of any illegality or irregularity in the first order and merely that it came to the notice of the counsel that allegedly, in similar circumstances, the interim benefit had been granted to another party, would not itself be a ground for review, as such.

In such circumstances, the question of law framed above is answered against the appellant. The present appeal is, accordingly, dismissed.

(S.J.Vazifdar)
Acting Chief Justice

(G.S.Sandhawalia)
Judge

29.04.2015
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