KIN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 4.2.2016

Coram:

The Hon'ble Mr.Justice V.RAMASUBRAMANIAN
and
The Hon'ble Mr.Justice N.KIRUBAKARAN

Civil Miscellaneous Appeal No.95 of 2009

Commissioner of Service Tax,
No.692, MHU Complex,
Anna Salai, Nandanam,
Chennai - 600 035. ... Appellant

Versus

1. M/s. TTK Health Care Limited,
No.8, Old Trunk Road,
Pallavaram, Chennai - 600 043.

2. Custom, Excise and Service Tax
Appellate Tribunal, South Zonal Bench,
Shastri Bhawan Annexe, 1st Floor, No.26,
Haddows Road, Chennai - 600 006. .. Respondents

Civil Miscellaneous Appeal filed under Section 35-G of the Central Excise Act, 1944, against the Final Order No.512 of 2008, dated 26.05.2008 passed by the Customs Excise and Service Tax Appellate Tribunal, Chennai Bench, Chennai.

For Appellant	:	Mr.Vikram Ramakrishnan, Standing Counsel
For Respondent-1	:	Mr.S.Muthu Venkataraman

JUDGMENT

V.RAMASUBRAMANIAN, J

This appeal by the Revenue is filed under Section 35-G of the Central Excise Act, 1944, questioning the correctness of the order of Customs, Excise and Service Tax Appellate Tribunal, dismissing an appeal arising out of the quashing of a show cause notice for recovery of refund already made.

2. We have heard Mr.Vikram Ramakrishnan, learned Standing Counsel for the appellant and Mr.Muthu Venkataraman, learned counsel for the first respondent.

3. The first respondent was the recipient of the services of Clearing and Forwarding Agents. Therefore, in terms of Rule 2 (1)(d)(xii) of Service Tax Rules, 1994 as amended in 1997 and Rule 2(1)(d)(vii) of the Service Tax Rules, 1994 as amended in 1994 in relation to services provided by a Clearing and Forwarding Agent, the first respondent became liable to pay service tax on receipt of the services of Clearing and Forwarding Agencies. Accordingly they paid Service Tax, for the period from 16.7.1997 to 31.8.1999, to the extent of Rs.27,19,123/-.

4. However, the provisions of the aforesaid Rules were struck down by the Supreme Court in M/s. Laghu Udyog Bharati v. Union of India [1999 ELT (112) 365 SC]. Therefore, the first respondent made a claim for refund and the same was allowed. The amount was also paid.

5. However, the Parliament brought-forth an amendment under Sections 116 and 117 of the Finance Act, 2000, to Section 65 of the Finance Act, 1994 with retrospective effect. The same received the assent of the President on 12.5.2000.

6. Therefore, a show cause notice was issued calling upon the first respondent to pay back the refund already granted. This show cause notice resulted in an Order in Original dated 22.12.2000.

7. But the Order in Original directing recovery of refund already granted, was set aside by the Commissioner (Appeals). The same was also confirmed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench at Chennai, forcing the Department to come up with the above appeal.

8. The appeal was admitted on 28.1.2009 on the following substantial questions of law:-

(i) Whether the Tribunal is correct in holding that any amendment making the recipient of clearing and forwarding service liable to pay tax on such service; and

(ii) Whether the Tribunal is correct in holding that there are no charging provisions under the Finance Act, 1994 for collection of Service Tax from the recipient of clearing and forwarding agents since 16.10.98.

9. In support of the contention of the Department, it is submitted by Mr.Vikram Ramakrishnan, learned Standing Counsel that the impugned order of the Tribunal was based upon its earlier decision in Commissioner v. DCW Limited [2006(1) STR 298]. But the same had already been set at naught by a Division Bench of this Court on 8.11.2013 in C.M.A.(MD) No.492 of 2007.

Therefore, it is contended by the learned Standing Counsel that the very basis of the impugned order of the Tribunal has gone.

10. We have carefully considered the above submissions.

11. Unfortunately, the order of this Court in C.M.A.(MD) No.492 of 2007, was passed on a concession by the learned counsel for the Assessee to the effect that after the amendment under Sections 116 and 117 of the Finance Act, 2000, the Department was entitled to refuse refund. This Court do not go into the validity of the decision of the Tribunal in Commissioner v. DCW Limited.

12. In any case, the show cause notice was issued admittedly on 20.7.2000. Section 117 of the Finance Act, 2000 made it clear that any refund already made could be recovered only within the period of 30 days from the date on which Finance Act, 2000 received the assent of the President. Therefore, obviously the show cause notice dated 20.7.2000 was not in accordance with Section 117. Hence, the substantial questions of law need not be answered at all. The claim for recovery of the refund having not been made in accordance with Section 117, the appeal is liable to be dismissed. Accordingly the appeal is dismissed.

-s/d-
Assistant Registrar(CS-I)

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Sub-Assistant Registrar

To

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

+ 1 cc to M/s.G.RM.Palaniappan,Advocate, SR 7309

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