

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

STA No. 24 of 2015 (O&M)

Date of Decision: 9.2.2016

M/s. Life Long India Ltd., IMT Manesar, Gurgaon

....Appellant.

Versus

The Commissioner, Service Tax, Delhi

...Respondent.

1. Whether the Reporters of the local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MRS. JUSTICE RAJ RAHUL GARG.**

PRESENT: Mr. Amar Pratap Singh, Advocate for the appellant.

Ms. Ranjana Shahi, Advocate for the respondent.

AJAY KUMAR MITTAL, J.

1. This appeal has been preferred by the assessee under Section 35G of the Central Excise Act, 1944 (in short, "the Act") against the orders dated 16.7.2015 and dated 12.5.2015 (Annexure A-1 Colly) passed by the Customs Excise and Service Tax Appellate Tribunal, New Delhi (hereinafter referred to as "the Tribunal") claiming the following substantial questions of law:-

- (i) Whether in facts and circumstances of present case impugned order directing the appellant to deposit ₹ 2,35,00,000/- along with interest is correct as per the prevailing law and facts?
- (ii) Whether in facts and circumstances of present

case impugned order directing the appellant to deposit ₹ 2,35,00,000/- along with interest is correct when order-in-original has been passed ex parte in contravention of the legal provisions?

- (iii) Whether in facts and circumstances of present case impugned order directing the appellant to deposit ₹ 2,35,00,000/- along with interest when the amount of tax liability has been wrongly calculated?
- (iv) Whether in facts and circumstances of present case impugned order directing the appellant to deposit ₹ 2,35,00,000/- along with interest when the entire exercise is revenue neutral?
- (v) Any other question which this Hon'ble High Court may consider fit in the facts and circumstances of the present case.

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The appellant is registered with Service Tax Division, Gurgaon vide Registration Certificates dated 1.10.2004 and 28.2.2005 (Annexure P-2). The appellant is engaged in the manufacture and export of motor vehicle parts and entered into agreements dated 1.7.2008/31.8.2004 (Annexure P-3) with the foreign service providers like M/s Wainwright Industries Inc. USA and others for handling the goods including inspection, sorting etc. Vide the said agreements, the appellant had agreed to pay for services rendered in relation to such goods received by M/s Wainwright Industries

Ltd. who issued invoices (Annexure A-4). Audit of the appellant was conducted on 27.12.2008 to 31.12.2008 wherein it was found that the appellant had entered into an agreement with M/s Wainwright Industries Inc., USA for inspection and re-work services rendered in relation to the goods. The appellant paid ₹ 52,20,176/- during the period 2006-07 and ₹ 85,20,673/- during 2007-08. The said services of M/s Wainwright Industries Inc. were taxable and, therefore, the appellant was liable to pay service tax. Accordingly, a show cause notice dated 4.4.2012 (Annexure A-5) for the period 2006 to October, 2011 demanding service tax amounting to ₹ 3,90,11,312/- along with interest and penalties was issued. The appellant filed its reply dated 15.7.2012 (Annexure A-6) to the said show cause notice. The appellant received a letter dated 14.1.2013 for personal hearing and sent a letter dated 24.1.2013 (Annexure A-7) for adjournment of the hearing of the case. The Commissioner vide order dated 30.4.2013 (Annexure A-8) confirmed the demand of service tax along with interest under Section 75 of the Act and also imposed penalties under Sections 77 and 78 of the Act. Feeling aggrieved, the appellant filed an appeal along with stay application (Annexure A-9) before the Tribunal. The Tribunal vide order dated 12.5.2015 directed the appellant to deposit ₹ 2,35,00,000/- along with interest as a pre-deposit for hearing of the appeal on merits. However, the Tribunal vide order dated 16.7.2015 dismissed the appeal of the appellant for non-compliance of the order dated 12.5.2015. Copies of orders dated 12.5.2015 and dated 16.7.2015 are appended with the appeal as Annexure A-1. Hence, the present appeal.

3. Learned counsel for the appellant submitted that the requirement of ₹ 2,35,00,000/- along with proportionate interest as pre-

deposit as a condition precedent for hearing of the appeal was unfair and excessive.

4. Learned counsel for the revenue opposed the prayer made by the learned counsel for the appellant and submitted that the amount as directed by the Tribunal was reasonable and justified.

5. The primary dispute that arises for consideration in this appeal relates to the quantum of pre-deposit to be made by the appellant as a condition precedent for the hearing of the appeal by the Tribunal. After hearing learned counsel for the parties and keeping in view the totality of the facts and circumstances of the case, a sum of ₹ 50 lacs shall be deposited by the appellant within a period of four weeks from the date of receipt of certified copy of the order as a condition precedent for hearing of the appeal which would meet the ends of justice.

6. It was pointed out that vide order dated 16.7.2015 passed by the Tribunal, the appeal was dismissed for non-compliance of stay order dated 12.5.2015 (Annexure A-1). Accordingly, the order dated 12.5.2015 is modified whereas the order 16.7.2015 passed by the Tribunal dismissing the appeal of the appellant for non-compliance of the pre-deposit order dated 12.5.2015 is set aside. On deposit of ₹ 50 lacs, the Tribunal shall proceed to adjudicate the appeal on merits expeditiously in accordance with law.

7. The appeal stands disposed of.

(AJAY KUMAR MITTAL)
JUDGE

February 9, 2016
gbs

(RAJ RAHUL GARG)
JUDGE