

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 10.04.2017
CORAM

THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER
And
THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

C.M.A.No.3410 of 2011

M/s.P.A.P.Chidambara Nadar ... Appellant/Respondent

Vs.

- 1.The Customs Excise and Service Tax
Appellate Tribunal,
Shastri Bhavan Annexe,
Chennai.
- 2.The Commissioner of Central Excise,
Bibikulam, Madurai. ... Respondents/Appellant

Prayer:

Appeal filed under Section 35 G of the Central Excise Act, 1944, against the order passed in Final Order No.558/11 in Appeal No.ST/98/2011 dated 03.05.2011, by the Customs, Excise and Service Tax Appellate Tribunal, Chennai.

For Appellant : Mr.K.Jayachandran

For Respondents: Mr.T.Pramod Kumar Chopda

J U D G M E N T

(Judgment of the Court was delivered by RAJIV SHAKDHER,J.)

1.This is an appeal, whereby, challenge is laid to the order dated 03.05.2011, passed by the Customs, Excise and Service Tax Appellate Tribunal (in short, the Tribunal).

2.The appellant is aggrieved by the fact that the Tribunal, without getting into the merits of the matter, allowed the appeal of the Revenue, on the first returnable date, after notice was issued, in the appeal.

2.1.According to the appellant/ Assessee, the appeal was filed by the Revenue on 14.02.2011.

2.2.It is stated by the appellant/ Assessee that notice was served upon it on 23.03.2011, requiring it to appear before the Tribunal on 03.05.2011.

2.3.Concededly, the appellant/ Assessee did not appear

before the Tribunal on the said date, when, the Tribunal allowed the appeal, on the short ground that the service provider, i.e., the Transporter in this case, though, an individual had rendered service to the appellant/ Assessee, which is a partnership firm.

2.4. For this purpose, the Tribunal relied upon the provisions of Rule 2(1)(d)(v)(g) of the Service Tax Rules, 1994, (in short, the 1994 Rules).

3. Learned counsel for the appellant says that apart from the fact that due opportunity was not given by the Tribunal to contest the case, the Tribunal has fallen into error, in overlooking the fact that the Assessee is the recipient of service and therefore, not liable to pay service tax.

3.1. This apart, learned counsel submits that even if it is held that the Assessee is liable to pay service tax, it would be entitled to claim benefit of Notification No.32/2004 dated 03.12.2004: an aspect which, the Tribunal did not notice as the appellant/ Assessee was not represented before it.

4. Mr. Chopda, who appears on behalf of the respondent/ Revenue contends to the contrary.

4.1. It is his submission that a perusal of the provision on which, reliance has been placed by the Tribunal would show that the appellant/ Assessee, even though recipient of service, would be liable to pay service tax.

4.2. Furthermore, Mr. Chopda says, that the aforementioned Notification would enure to the benefit of the service provider, i.e., Transporter and not the appellant/ Assessee.

5. We have heard the learned counsels for the parties and perused the record.

6. The provision in issue, to which, recourse has been taken by the Tribunal reads as follows:

"Rule 2(1)(d)(v) - In these rules unless the context otherwise requires, - "Person liable for paying service tax" means, -

(v) in relation to taxable service provided by a goods transport agency where the consignor or consignee of goods is, -

(a) any factory registered under or governed by the Factories Act, 1948;

(b) any company formed or registered under the Companies Act, 1956;

(c) any corporation established by or under any law;

(d) any society registered under the Societies Registration Act, 1860 or under any law corresponding to that Act in force in any part of India;

- (e) any cooperative society established by or under any law;
- (f) any dealer of excisable goods, who is registered under the Central Excise Act, 1944 or the rules made there under;
- (g) any body corporate established or a partnership firm registered, by or under any law;"

7. Based on the aforementioned provision, the respondent/ Revenue argues, as indicated above that the appellant/ Assessee, being a registered partnership firm, which falls under clause 'g' of Rule 2(1)(d)(v) of the 1994 Rules, would be liable to pay the service tax, in respect of service provided to it, by an individual Truck Operator.

7.1. This aspect of the matter, as it appears, has been noticed by the Tribunal.

7.2. To that extent, no fault could be found with the order of the Tribunal, as, despite service, the appellant/ Assessee was not represented before the Court.

7.3. However, the other aspect, as to whether the appellant/ Assessee would be entitled to claim the benefit of Notification dated 03.12.2004, has not been touched upon by the Tribunal.

7.4. As a matter of fact, the record shows that this was a second round of litigation, before the Tribunal and that in the earlier round, the Tribunal vide judgment dated 19.06.2009, had disposed of the matter with the direction to the Adjudicating Authority to pass a fresh order, based on the plea raised before it, by the appellant/ Assessee, that it was entitled to the benefit of Notification dated 03.12.2004.

7.5. This aspect of the matter was required to be addressed by the Tribunal. Since the appellant/ Assessee was not represented, this aspect did not come to fore.

8. Furthermore, in so far as the first aspect is concerned, the appellant/ Assessee seeks to place reliance on the judgment of the Tribunal in the case of Shanti Fortune (I) Pvt. Ltd., Vs. Commissioner of Central Excise, Coimbatore, 2010 (19) S.T.R. 883 (Tri. - Chennai) and, another judgment of the Tribunal rendered in C.C.E. & C., Guntur Vs. Kanaka Durga Agro Oil Products Pvt. Ltd., 2009 (15) S.T.R. 399 (Tri. - Bang.).

9. We are informed by the learned counsel for the appellant/ Assessee that while against the judgment rendered by the Chennai Bench of the Tribunal, no appeal has been preferred, in so far as the judgment rendered by the Bangalore Bench is concerned, an appeal has been preferred by the Revenue to the Karnataka High Court.

9.1. The learned counsel for the appellant/ Assessee says

that the said appeal, which is, numbered as CEA No.44 of 2010, stands admitted.

10. Therefore, having regard to the aforesaid facts and circumstances, we are of the view that the impugned order ought to be set aside and remanded to the Tribunal, for a de novo hearing, on merits. It is ordered accordingly.

10.1. The Tribunal is, consequently, directed to re-hear the parties once again, after giving notice to the parties.

11. The appeal is disposed of in the aforementioned terms. However, there shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Customs Excise and Service Tax
Appellate Tribunal,
Shastri Bhavan Annexe,
Chennai.

2. The Commissioner of Central Excise,
Bibikulam, Madurai.

+1cc to Mr. Pramod Kumar Chopda, Advocate, S.R.No.21445

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