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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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+ **W.P.(C) 10870/2015**

AIRPORTS AUTHORITY OF INDIA

..... Petitioner

Through: Mr. Anil Kathuria, ASC with Mr. Neeraj
Aarora, Advocates

versus

UNION OF INDIA, DEPARTMENT OF REVENUE & ORS

....Respondents

Through: Mr. Vivek Goyal, CGSC with Mr. Harsh
Pandit, Advocate for UOI/R-1

Mr. Harpreet Singh, Senior Standing Counsel with
Ms. Namrata Bharti, Advocates for R-2 & 3

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE PRATHIBA M. SINGH

ORDER

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25.07.2017

1. This writ petition by the Airports Authority of India ('AAI') challenges the order dated 28th August, 2014 passed by the Customs, Excise and Service Tax Appellate Tribunal ('CESTAT') which upheld the order of the Commissioner of Service Tax (CST) dated 8th January, 2008, which has also been challenged in this writ petition.

2. Notice in the petition was issued on 23rd November, 2015. In reply to the petition, a very short counter-affidavit has been filed on behalf of the Department, which is exactly five paragraphs. Paragraph 5 simply states that "the Petitioner has filed Writ Petition directly against the order of

CESTAT.” There is no objection, as such, raised as to the maintainability of the petition.

3. Mr. Anil Kathuria, learned Additional Standing Counsel appearing for AAI, pointed out that although AAI has an alternative statutory remedy of appeal, given the background of the case and the obvious errors in the impugned orders, AAI has chosen to come directly to this Court by way of the present writ petition.

4. Considering that this petition has been pending for nearly two years and no serious objection as such has been taken by the Respondent to its maintainability, the Court proposes to proceed on merits.

5. The Additional Director General, DGCEI, Zonal Unit Bombay had issued a Show Cause Notice (SCN) dated 18th July, 2006, followed by a corrigendum dated 13th September 2006, to AAI asking it to show cause as to why it should not be asked to pay service tax on the various services provided by it including those which were sought to be brought within the ambit of ‘airport services’.

6. AAI filed a response to the aforementioned SCN and corrigendum on 15th September, 2006. Subsequently an adjudicating order was passed by the CST on 15th December, 2006 confirming a service tax demand aggregating to approximately Rs.369.93 crores.

7. During the pendency of the appeals against the above order before the CESTAT both by AAI as well as the Department, an application under

Section 74 of the Finance Act, 1994 for 'Rectification of Mistake' (ROM) was filed by AAI before the CST on the ground that there was a mistake apparent on the face of the adjudication order dated 15th December, 2006. This application was rejected by the CST by an order dated 8th January, 2008. The CST held that there was no mistake apparent from the record in relation to said adjudication order.

8. Against the aforementioned order dated 8th January, 2008, AAI filed an appeal before the CESTAT which came to be disposed of by the impugned order dated 28th August, 2014.

9. There were two main grounds on which the rectification was sought by AAI. One concerned the rent charged by AAI for its space in the Scope Complex. It was pointed out that AAI had office space on the 4th and 5th floors of the Scope Complex. It had already deposited service tax on gross amount of 'non-traffic revenue' including the rent received by it for the above space. The grievance was that the adjudication order did not take into account the fact that AAI had discharged all its liabilities towards non-traffic revenue including the rent on Scope Complex which was in terms of the Finance Act, 1994.

10. The second ground on which the rectification was sought was that the CST had relied on the figures in the SCN while passing the adjudication order. Those were provisional figures whereas the figures mentioned in the revised return filed by the AAI on 26th June, 2006 were not taken into account.

11. With regard to the issue concerning the rent charged by the AAI for the space in the Scope Complex, Mr. Harpreet Singh learned counsel for the Respondent pointed out that there was no mistake apparent from the face of the record on this aspect in the adjudication order as the CST had relied on the information provided by AAI itself. As to the revised return filed by the AAI, it is pointed out that the Assessee had filed another revised return on 3rd March, 2006. However, the fact that a revised return was filed on 26th June, 2006, was not made known to the Field Officers of the ST Department. Mr Singh accordingly submitted that there was no obligation on the CST to take note of the said revised return. Reliance is placed on the decision of the Andhra Pradesh High Court in ***Kolli Venkata Mohan Rao v. Commissioner of Customs 2016 (42) S.T.R. 676 (A.P.)*** and the decision of the Supreme Court in ***Asstt. Commr., Income Tax, Rajkot v. Saurashtra Kutch Stock Exchange 2010 (18) S.T.R. 84 (S.C.)***. He pointed out that the error could not be said to be apparent on the face of the record if it involved a question regarding the correctness of the order sought to be rectified.

12. Mr Kathuria, learned counsel for the Petitioner on the other hand pointed out that it was incumbent on the CST to examine the entire assessment record of the Petitioner. In this context, he relied upon the decision of the Supreme Court in ***CIT v. Shree Manjunatheswara Packing Products (1998) 251 ITR 53 (SC)*** and the decision of the Madras High Court in ***Commissioner of Income Tax v. M.R.M. Plantation (P) Ltd. [1999] 240 ITR 660 (Mad)*** in which it was explained that where an authority is to examine an application seeking rectification of a mistake, the

entire record would have to be examined.

13. In the present case, the fact that the Petitioner had filed revised return on 26th June, 2006 is not disputed, particularly since the copies thereof have been placed on record even in this petition as Annexure-6. The only contention is that the fact of filing such revised return was not brought to the attention of the CST. In this context, it is significant that the order dated 8th January 2008, passed by the CST rejecting the rectification application itself notes that AAI had filed a revised return on 26th June, 2006. In any event, this formed part of the assessment record and, therefore, available with the Department. In such circumstances, the CST could not have restricted the examination to the SCN and the reply thereto, but was expected to examine the assessment record.

14. It is plain that the impugned adjudication order, which was passed subsequent to the filing of the revised return by the Petitioner, did not account for the figures mentioned in the revised return. The Court is unable to agree with the contention of learned counsel for the Respondent that it was incumbent on AAI to have drawn the attention of the adjudicating authority to the fact of filing of the revised return on 26th June, 2006. It is expected that the adjudicating authority will examine the entire record of AAI not limited to the documents supplied with the SCN or supplied along with the reply thereto.

15. The Court is accordingly satisfied that the rectification application filed by AAI requires to be considered afresh by the adjudicating authority.

Accordingly, the impugned order dated 8th January, 2008 by the CST rejecting the rectification application and the further order dated 28th August, 2014 passed by the CESTAT confirming it are hereby set aside.

16. Counsel for the Respondent states that the CST is not longer in place. In the circumstances, it is directed that AAI's rectification application will now be placed before the Appropriate Authority, whose name, address and designation shall be supplied by the Respondent to the Petitioner within two weeks from today. The date, time and venue of hearing of the application will also be communicated to AAI within the same period. The rectification application should be decided afresh within a period of eight weeks after the conclusion of the hearing without reference to the earlier orders in the matter.

17. The petition is disposed of in the aforesaid terms, but in the circumstances, with no order as to costs.

S.MURALIDHAR, J

PRATHIBA M. SINGH, J

JULY 25, 2017
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