In the High Court of Judicature at Madras

Dated : 23.10.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mrs.Justice V.BHAVANI SUBBAROYAN

Civil Miscellaneous Appeal No.2478 of 2018

The Commissioner of Central
Excise & Service Tax,
Coimbatore-18 ...Appellant

Vs

M/s.Ganga Medical Centre and Hospitals
(P) Ltd., Coimbatore-43. ...Respondent

APPEAL under Section 35G of the Central Excise Act, 1944 against final order No.43217 of 2017 dated 15.12.2017 in ST/40758/2017 on the file of the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai.

For Appellant : Mr.K.S.Ramaswamy

Judgment was delivered by T.S.SIVAGNANAM,J

We have heard the learned Standing Counsel for the appellant.

2. This appeal, by the Revenue, is directed against the final order passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai (for short, the Tribunal) in ST/40758/2017 dated 15.12.2017 raising the following substantial questions of law :

> "i. Whether the Tribunal is correct in setting aside the penalty imposed by the Adjudicating Authority under Sections 77 and 78 of the Finance Act, 1994 by invoking Section 80 ibid, when the issue on merits as well as the issue of limitation itself are remanded to the Adjudicating Authority for fresh decision, upon which, only 'sufficient

cause' for invoking Section 80 or otherwise would emerge ? And

> ii. Whether, under the facts and circumstances of the case, the Tribunal was correct in waiving the penalty under Section 80 of the Finance Act, when this Court, in the case of M/s.Arvinth Hospital has remanded the matter to the Adjudicating Authority and not waived penalty under Section 80 of the Finance Act in toto ?”

3. The only issue, which falls for consideration in this appeal, is as to whether the Tribunal, while remanding the matter to the Adjudicating Authority to re-consider the issue as to whether the services are taxable or not, including the issue relating to limitation, can consider the issue as to whether the penalty was leviable. By the impugned order, the Tribunal allowed the assessee's appeal in part and set aside the penalty, which has been levied.

4. Mr.K.S.Ramaswamy, learned Standing Counsel for the appellant has strenuously contended that when the Tribunal remanded the entire issue to the Adjudicating Authority for de novo consideration, it was not justified in setting aside the penalty and more so when the Tribunal had relied upon the decision of this Court rendered by one of us while sitting singly (TSSJ) in the case of M/s.Arvinth Hospitals Vs. Assistant Commissioner of Central Excise [(2017) 48 STR 337]. He has further submitted that the matter should have been remanded in its entirety leaving it open the Adjudicating Authority to consider, in the de novo adjudication, the issue as to whether penalty is leviable or not.

5. We are unable to countenance the stand taken by the Revenue before us on account of the following reasons recorded by the Tribunal in paragraph 9 of its order :

> "However, we make it clear that the issue being an interpretational one, also since the services were taxable for a limited period and as there was considerable confusion as to whether the services rendered under a scheme floated by the Government would fall within the category of health services for levy of service tax, we find that the appellant has put forward reasonable cause for not discharging service tax on the entire value raised in the Bill. It is a fit case to invoke Section 80 of the Finance Act, as it stood then. The Adjudicating Authority has failed to do so.

> As discussed, in the instant case, the penalty imposed is unwarranted. Further, the appellant has paid to the Government the service tax collected from the insurance company. Taking these facts into consideration, we are of the opinion that invoking Section 80, the penalty requires to be set aside, which, we hereby order."

6. The Revenue has not disputed the fact that the assessee had paid to the Government the service tax collected from the insurance company. Furthermore, the Tribunal noted that the issue was an interpretational one and also that since the services were taxable for a limited period, there was a confusion as to whether the services rendered under a scheme floated by the Government would fall within the category of 'health services' for levy of service tax.

7. In the case of M/s.Arvinth Hospitals, the writ petition was filed challenging the Order-in-Original confirming the demand of service tax by classifying the nature of services rendered by the petitioner therein under 'Health Checkup and Treatment Services' as defined under Section 65(105) (zzzzo) of the Finance Act, 1994. The Revenue objected to entertaining the writ petition on the ground that there had been an effective alternate remedy of appeal before the Commissioner of Appeals under the provisions of the Finance Act, 1994. However, this Court was inclined to entertain the writ petition in the light of the pure question of law, which was raised by the petitioner - hospital. This Court came to the conclusion that in the said case, the Adjudicating Authority, while adjudicating the show cause notice, did not examine the scope of the transaction between the petitioner hospital and the Government/STAR. Therefore, it was pointed out that the first endeavour of the Adjudicating Authority should have been to consider the preliminary objections taken by the petitioner therein by stating that "Kalaignar Kaapittu Thittam" is a welfare scheme and not an insurance policy, that no approval was obtained from the Insurance Regulation and Development Authority of India and that therefore, they would not fall within the definition of 'Health Checkup and Treatment Services'. The second aspect, which this Court pointed out was with regard to the aspect as to who was the insured, as the specific case of the petitioner therein was that the recipient is the public, who are below the poverty line and that there was no policy drawn between the beneficiary and the STAR or the petitioner therein. Therefore, ultimately, the matter stood remanded to the Adjudicating Authority for taking a holistic view on the entire aspect and the petitioner therein was directed to produce all the documents concerning the scheme.

8. In the instant case, the Tribunal remanded the matter to the Adjudicating Authority. The Revenue is not aggrieved by such remand order, but is only aggrieved by that portion of the order deleting the penalty. It is not clear as to whether the assessee filed any appeal as against the direction issued by the Tribunal remanding the matter for de novo consideration. In any event, we are not adjudicating the correctness of such a direction and this order is confined only to the challenge only in respect of that portion of the order of the Tribunal deleting the penalty.

9. As noticed above, the issue was an interpretational one and the services were taxable only for a limited period. The assessee also remitted the service tax collected from the insurance company. Thus, we find that the Tribunal is right in deleting the penalty as being unwarranted. In the light of the factual situation, we are convinced that no question of law, much less, substantial question of law arises for consideration in this appeal.

10. Accordingly, the above civil miscellaneous appeal is dismissed. We once again make it clear that this order is confined to the challenge only with regard to that portion of the order of the Tribunal deleting the penalty and we have not adjudicated the correctness of the remaining portion of the order of the Tribunal remanding the matter for de novo consideration.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

RS

To

The Customs, Excise and Service Tax Appellate Tribunal,
South Zonal Bench, Chennai.

+1 CC to Mr.K.S.Ramaswamy, Advocate sr 71866(22/01/2019)

CMA.No.2478 of 2018

CP(CO)
CSL/19.11.2018