THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

CENTRAL EXCISE APPEAL No.93 of 2018

JUDGMENT: (*Per* Hon'ble Sri Justice Sanjay Kumar)

This appeal by the assessee under Section 35(G) of the Central Excise Act, 1944, read with Section 83 of the Finance Act, 1994, arises out of the order dated 18.08.2017 passed by the Customs, Excise and Service Tax Appellate Tribunal, Regional Bench, Hyderabad, in Appeal No.ST/30086/2016. The appellant-assessee seeks to raise the following substantial questions of law.

> "1. The order of the CESTAT, Regional Bench at Hyderabad is illegal and contrary to law, weight of evidence, facts and circumstances of the case.
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> 2. Whether the OIO dated 05.01.2016 passed by the respondent demanding an amount of Rs.6,19,469 towards service tax on two taxable services, without considering the payment of Rs.3,81,612 towards the two taxable services, by the appellant is proper and valid in the eye of law?
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> 3. Whether it is permissible in law to levy penalty of Rs.6,19,469/- equivalent to the demanded amount, under Section 78 of Finance Act, 1994, especially when the respondent had appropriated an amount of Rs.3,81,612 paid by the appellant towards service tax dues on two taxable services against the existing demand of Rs.6,19,469?
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> 4. Whether the finding of the respondent that the VCES declaration filed by the respondent is substantially false is correct, especially when the respondent undertook to pay the differential amounts?
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> 5. Whether it is legally permissible to treat Income Tax returns filed by the respondent as the material basis to arrive at the Service Tax liability on two taxable services especially when Balance Sheet, Profit and Loss Statement and accounts of the appellant were available with the respondent to arrive at the appellant's liability?"

2. The appeal before the Tribunal was filed by the appellant-assessee against the order-in-original dated 05.01.2016 passed by the Commissioner of Customs, Central Excise and Service Tax, Tirupati Commissionerate, Tirupati.

3. The issue pertains to non-payment of service tax by the appellant-assessee on the services of 'Renting of Immovable Property', 'Restaurant Services' and 'Advertisement Services'.

4. Admittedly, it was only after initiation of investigation by the Service Tax Authorities that the appellant-assessee obtained service tax registration on 10.12.2013. Thereafter, the appellant-assessee deemed it appropriate to participate in the Voluntary Compliance Encouragement Scheme (VCES) floated by the Service Tax Department and filed a declaration thereunder on 30.12.2013. However, the Service Tax Authorities found that this declaration was substantially false in view of the documentary evidence gathered by them as to the rents received and the service tax payable on the restaurant services. The application of the appellant-assessee under the said scheme was accordingly rejected and it was independently assessed to service tax on the aforestated taxable services by way of the order-in-original dated 05.01.2016. The Assessing Officer also visited penalties upon the appellant-assessee for statutory contraventions. It is against this order that the appellant-assessee approached the Tribunal by way of Appeal No.ST/30086/2016.

5. Perusal of the order passed therein by the Tribunal demonstrates that the only ground raised by the appellant-assessee was that in the light of the declaration filed by it under the VCES, the assessment to tax and levy of penalty by the Assessing Officer was unsustainable. The Tribunal took note of the fact that the show cause notice issued to the appellant-assessee specifically raised the issue of suppression of the value of services rendered by it under the category of 'Renting of Immovable Property Services' and 'Restaurant Services'. The Assessing Officer categorically recorded a finding as to how the appellant-assessee had suppressed such values. As the appellant-assessee did not produce any evidence to the contrary but only relied upon its declaration under the VCES, the Tribunal rightly noted that once the said declaration was rejected as being factually incorrect, the Assessing Officer was at liberty to independently adjudicate the issue and pass an Assessment Order. On these grounds, the Tribunal dismissed the appeal.

5. Sri K.Bharat Ram, learned counsel for the appellant, does not dispute the fact that the declaration filed by the appellant-assessee under the VCES stood rejected and no steps were taken in relation thereto. That being so, it is not open to the appellant-assessee to again fall back upon the said declaration at this stage to support its argument that the assessment to tax and levy of penalty under the order-in-original dated 05.01.2016 is unsustainable.

6. Though Sri K.Bharat Ram, learned counsel, would further contend that imposition of penalty was not warranted, we find from the order that both the authorities below concurred on the issue as to suppression of correct values by the appellant-assessee. It may be noted that the income tax returns of the appellant-assessee were taken into account in this regard. Therefore, there can be no doubt that the appellant-assessee did resort to suppression. In such circumstances, imposition of penalty was very much warranted.

7. On the above analysis, we find no question of law, much less a substantial one, arising for consideration in this appeal justifying its entertainment. The appeal essentially turns upon factual issues which stood settled by the adjudication thereof by the final fact finding authority, the Tribunal.

8. The appeal is accordingly dismissed. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

SANJAY KUMAR, J

T.AMARNATH GOUD, J

Date: 19.06.2018
TJMR