IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 3960 of 2017

DATE OF DECISION : 28.03.2018

M/s Krishna Cable TV Network, Amritsar and another

.... PETITIONERS

Versus

Union of India and others

.... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE S.J. VAZIFDAR, CHIEF JUSTICE
HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Sudhir Malhotra, Advocate, for the petitioners.

Mr. Sourabh Goel, Advocate, for the respondents.

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AVNEESH JHINGAN, J.

This petition has been filed for quashing an order dated 16.09.2015 (Annexure P-1), appointing adjudicating authorities to decide the show cause notices issued to cable operators regarding their liability to pay service tax and an order dated 08.12.2016 (Annexure P-4).

2. The petitioners are cable operators carrying on business of cable services at Amritsar. The respondents are the Union of India, Central Board of Excise and Customs and two officials of the Central Excise & Service Tax department.

3. The petitioners were not registered with the Service Tax department during the period from 01.10.2009 to 30.06.2012. They were

providing cable services to various consumers. During the audit of M/s Fastway Transmission Pvt. Ltd., Ludhiana (for short, `M/s Fastway'), the respondents found that M/s Fastway was acting as Multi-system Operator and receiving its share of subscription amount from the cable operators who were providing cable services to the consumers. Show cause notices were issued to the petitioners alleging that they were providing taxable services but were neither registered with the department nor had paid the service tax. In pursuance to the show cause notices, the order dated 08.12.2016 (Annexure P-4) was passed by respondent No.4, i.e. Deputy Commissioner, Central Excise & Service Tax Commissionerate, Chandigarh. A demand was raised which included service tax, interest and penalty.

4. The present writ petition has been filed rasing two issues;

> (i) that the order dated 16.09.2015 (Annexure P1) appointing respondent No.4 as an adjudicating authority is bad, as by notification dated 19.04.2007, only Commissioners of Central Excise were given the powers of Central Excise Officers. As a result order dated 08.12.2016 (Annexure P-4) is without jurisdiction, having been passed by the Deputy Commissioner; and
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> (ii) that the order dated 16.09.2015 (Annexure P1) is contradictory to the CBEC Circular dated 29.09.2016. Order dated 16.09.2015 (Annexure P-1) appoints various officers for adjudicating similar notices issued to various noticees, whereas as per the Circular, it should be

decided by one adjudicating authority who had competence to decide the case involving the highest amount of duty.

5. Though the impugned order dated 08.12.2016 (Annexure P-4) is appealable, we entertained this petition as a question of jurisdiction is raised.

6. The petitioners' reliance on a notification dated 19.04.2007 to contend that only Commissioners of Central Excise have been conferred power under Section 83A of the Finance Act, 1994 (for short, `the Act') is not well founded.

7. Section 83A of the Act, Rule 3 of the Service Tax Rules, 1994 (for short, `the Rules'), notification No. 30/2005-Service Tax dated 10.08.2005 and notification No. 16/2007-Service Tax dated 19.04.2007 : read as under :-

(A) ***Section 83A of the Act – Power of adjudication***

Where under this Chapter or the rules made thereunder any person is liable to a penalty, such penalty may be adjudged by the Central Excise Officer conferred with such power as the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963), may,by notification in the Official Gazette, specify.

Rule 3 of the Rules – Appointment of officers

The Central Board of Excise and

Customs may appoint such Central Excise Officers as it thinks fit for exercising the powers under Chapter V of the Act within such local limits as it may assign to them as also specify the taxable service in relation to which any such Central Excise Officer shall exercise his powers.

(B) ***Notification No. 30/2005-Service Tax dated 10.08.2005***

In exercise of the powers conferred by section 83A of the Finance Act, 1994 (32 of 1994), the Central Board of Excise and Customs hereby confers on the Central Excise Officer specified in column (2) of the Table below, such powers as specified in the corresponding entry in column (3) of the said Table, for the purposes of adjudicating a penalty under Chapter V of the said Finance Act or the rules made thereunder.

Table

S. No.	***Central Excise Officer***	***Amount of service tax or CENVAT credit specified in a notice for the purpose of adjudication under section 83A***
(1).	(2).	(3).
(1).	Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise	Not exceeding Rs. 5 lakhs
(2).	Joint Commissioner of Central Excise	Above Rs. 5 lakhs but not exceeding Rs. 20 lakhs
(3).	Additional Commissioner of Central Excise	Above Rs. 20 lakhs but not exceeding Rs. 50 lakhs
(4).	Commissioner of Central Excise	Without limit

Provided that nothing contained in this notification shall be applicable where a decision or order passed under Chapter V of the said Finance Act or the rules made thereunder has been referred back to any authority which passed such decision or order, with such directions, for a fresh adjudication or decision, as the case may be.

2. This notification shall come into force on the date of its publication in the Official Gazette.

F. No. 341/31/2005-TRU
Ajay
Under Secretary to the Government of India

(C) ***Notification No. 16/2007-Service Tax dated 19.04.2007***

G.S.R. (E)- In exercise of the powers conferred by section 83A of the Finance Act, 1994 (32 of 1994), read with rule 3 of the Service Tax Rules, 1994, the Central Board of Excise and Customs appoints the officers of Central Excise specified in Column (2) of the Table below, and invest with him all the power of Central Excise Officer specified in Column (3) of the said Table to be exercised within such jurisdiction and for such purposes as specified in Columns (4) and (5) of the said Table respectively.

Table

S. No.	***Central Excise Officer***	***Central Excise Officer whose power are to be exercised***	***Jurisdiction***	***Purposes***
(1).	(2).	(3).	(4).	(5).
1.	All the Commissioners of Central Excise	The Commissioner of Central Excise	Throughout the territory of India	Investigation and adjudication of such cases, as may be assigned by the Board
2.	The Commissioners of Central Excise (Adjudication)	The Commissioner of Central Excise	Throughout the territory of India	Investigation and adjudication of such cases, as may be assigned by the Board

[F. No. 137/60/2007-CX.4]
(Ashima Bansal)
Under Secretary to the Government of India

7. The powers of adjudication have been given under Section 83A of the Act to the Central Excise Officers. The power is conferred by the Central Board of Excise and Customs by a notification. As per Rule 3 the Board may appoint the Central Excise Officers and also assign the local limits and specify the taxable services. In exercise of power conferred under Section 83A of the Act, the Board issued the notification dated 10.08.2005. Assistant Commissioner, Deputy Commissioner, Joint Commissioner, Additional Commissioner and Commissioner of Central Excise were appointed as Central Excise Officers and their monetary limits for purpose of adjudication were fixed in column (3) of the notification.

8. The argument of the petitioners solely relying on notification

dated 19.04.2007 is misplaced. The notification of 2007 is not in supersession of the earlier notification. The two notifications operate for different purposes. The notification of 2005 appoints various officers as Central Excise Officers and specifies the monetary jurisdiction for the purpose of adjudication, whereas under the 2007 notification, the Commissioners of Central Excise have been appointed as the Central Excise Officers giving them jurisdiction throughout India, only for cases of investigation and adjudication which are assigned by the Board. As per the 2005 notification, all the officers having designations mentioned therein have been appointed as Central Excise Officers.

9. The contention raised by learned counsel for the petitioners that the order dated 08.12.2016 (Annexure P-4) passed by respondent No.4 is without jurisdiction as respondent No.4 was not a Central Excise Officer, is rejected, in view of the 2005 notification.

10. The second limb of the argument is based upon clause 11.2 of the Master Circular. Before dealing with the contention, we may quote clauses 11.2 and 11.5 of the Master Circular :-

> ***11.2 Other important points :***
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> *Cases involving taxability, classification, valuation and extended period of limitation shall be kept out of the purview of adjudication by Superintendents. Such cases, upto rupees 10 Lakhs, shall also be adjudicated by the Deputy Commissioner/Assistant Commissioner in addition to the cases exceeding rupees 10 Lakhs but not exceeding rupees 50 lakh.*

> *i. Refund matters (including rebate), shall be adjudicated by the Deputy Commissioner/ Assistant Commissioner without any monetary limit*
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> *ii. In case different show cause notices have been issued on the same issue answerable to different adjudicating authorities, Show Cause Notices involving the same issue shall be adjudicated by the adjudicating authority competent to decide the case involving the highest amount of duty.*
>
> ***11.5*** *In case different show cause notices have been issued on the same issue to same noticee(s) answerable to different adjudicating authorities, Show Cause Notices involving the same issue shall be adjudicated by the adjudicating authority competent to decide the case involving the highest amount of duty.*

11. The contention is that a common issue is involved in all the show cause notices issued to various noticees, hence, there cannot be different adjudicating authorities. All the show cause notices should be adjudicated by a competent adjudicating authority who has jurisdiction to decide the case involving the highest amount of duty.

12. There is a fallacy in the argument. Clause 11.2 (ii) of the Master Circular does not mean that show cause notices issued to different noticees on the same issue shall be adjudicated by one authority. It would relate only to cases where on a similar issue different show cause notices have been issued to the same noticee.

13. The circular will save the noticee running from pillar to post before various adjudicating authorities and defending similar notices at different levels. The view is fortified by a reading of clauses 11.2 and 11.5 of the Master Circular. Clause 11.5 clarifies the position. If different show cause notices have been issued on the same issue to the same noticee answerable to different adjudicating authorities, then all the show cause notices would be decided by the adjudicating authority in a case involving the highest amount of duty.

14. The interpretation of clause 11.2 of the Master Circular as argued by the petitioners, if upheld, would have catastrophic effects. If various show cause notices issued to various noticees throughout the country are to be dealt with by one adjudicating authority, it would be impossible to consolidate similar notices throughout the country at one place. The purpose of the clause to save noticees from harassment would be defeated. In fact their predicament would be far worse. The petitioners' contention if accepted would require notices from all over the country to travel to another place to contest the notices. Further, if all similar notices are to be decided by one Central Excise Officer, the adjudicating process may never conclude. Take a case where the adjudicating authority dealing with several notices of a similar nature of various noticees has commenced and is about to conclude the proceedings and at that stage, another similar notice is issued to other noticee, in whose case the amount involved is higher. If the petitioners' contention is accepted, all the notices will have to be transferred to the adjudicating authority having jurisdiction for that

amount. The proceedings will start afresh and this process would have to be repeated again and again.

15. From a reading of the clauses 11.2 and 11.5 of the Master Circular, the position emerges that only if similar show cause notices are issued to the same noticee by different adjudicating authorities, all such notices would be adjudicated by one adjudicating authority, i.e. the officer competent to decide the case involving the highest amount of duty. The challenge to the order dated 16.09.2015 (Annexure P-1) also fails.

16. The writ petition is dismissed. However, since we have not adjudicated upon the merits of the case, the petitioners would be at liberty to avail their remedy of a statutory appeal against the impugned order dated 08.12.2016.

(S.J. VAZIFDAR)
CHIEF JUSTICE

March 28, 2018 **(AVNEESH JHINGAN)**
ndj **JUDGE**

Whether speaking/reasoned	Yes
Whether Reportable	Yes