

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.01.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.16067 of 2017 and
W.M.P.No.17351 of 2017

M/s.Chennai Citi Centre Holdings (P) Limited,
No.10-11, Radhakrishnan Salai,
Mylapore, Chennai 600 004.
rep.by its Authorised Signatory. Petitioner

vs.

1.The Commissioner of Service Tax (Appeals - I)
Newry Towers,
2054, I-Block,
2nd Avenue, 12th Main Road,
Anna Nagar West,
Chennai 600 040.

2. The Additional Commissioner of Service Tax
Service Tax II Commissionerate,
2054, I Block,
2nd Avenue, 12th Main Road,
Anna Nagar West,
Chennai 600 040. Respondents

Prayer : Writ petition is filed under Article 227 of the Constitution of India, praying for a writ of Certiorarified Mandamus calling for the records from the 1st respondent, communication bearing C.No.IV/2/10/2016 (STA-II) dated 03.05.2017 was issued and to quash the same and direct the 1st respondent to entertain the appeal filed by the petitioner, without insistence of any further pre-deposit.

For petitioner : Mr.G.Natarajan M.Karthikeyan

For Respondents : M/s.Hema Muralikrishnan
Sr.Standing Counsel.

O R D E R

The petitioner has filed the present writ petition to quash communication dated 3.5.2017 bearing reference C.No.IV/2/10/2016 (STA) issued by the office of the 1st respondent and consequently to direct the 1st respondent to entertain the appeal filed by the petitioner without insisting on further pre-deposit of amount.

2. The petitioner had filed appeal against the common Order in Original Nos.14 to 16 of 2017 dated 10.02.2017 passed by the 2nd respondent before the 1st respondent Commissioner of Service Tax (Appeals-I) on 25.4.2017.

3. By the impugned communication dated 3.5.2017 bearing reference C.No.IV/2/10/2016 (STA) signed by the Superintendent of Service Tax (Appeals-II) attached to the office of the 1st respondent, the petitioner has been informed that these appeals filed by the petitioner shall not be entertained by the 1st respondent Commissioner (Appeals) unless the petitioner deposits 7.5% of the impugned service tax/penalty and since the petitioner had failed to comply with the same the appeals filed by the petitioner were liable to be returned. It has been further pointed out that there is a delay of one day in filing the appeal. However no application for condonation of the delay has been filed by the Petitioner.

4. It is the case of the petitioner that it is the owner of the immovable property named "Chennai City Centre" in Chennai and has rented out the same to various tenants. As such as the owner of the immovable property renting out to various tenant the petitioner was liable to pay service tax for renting of immovable property in terms of the provisions of the Finance Act, 1994, but has questioned its liability.

5. It is submitted that some of the tenants have challenged the service tax liability and had approached this High Court. Their petitions came to be dismissed. Subsequently, there was a retrospective amendments to the provisions of the Finance Act, 1994, pursuant to which separate writ petitions were filed before the Hon'ble Supreme Court and Interim Order came to be passed on 14.10.2011 in Retailers Association of India Vs Union of India, 2012 (26) S.T.R. J96 (S.C) in C.A.No.8390 of 2011. As per the said order, the tenants were directed to deposit 50% of the service tax directly.

6. Since the Order in Original No. 14-16 of 2017 dated 10.2.2017 came to be passed the petitioner preferred the appeals before the 1st respondent. The learned counsel for the petitioner submits that it has actually deposited amounts in excess of 7.5% and therefore there is no justification in the impugned communication.

7. Learned Counsel for the Petitioner further submits that if an opportunity is given to the petitioner, it will convince the Commissioner of Service Tax (Appeals I) regarding the payments made for the purpose of pre-deposit under Section 35 F of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994.

8. Pursuant to the direction of this Court, the Office of the 1st respondent was directed to file a report regarding the amounts paid by the petitioner for the purpose of Section 35 F of the Central Excise Act, 1944. A report dated 28.10.2010 of the Superintendent (Legal) has been filed by the learned Counsel for the respondent. Paragraph-8 of the said report is extracted hereunder:

" 8. Based on the details provided by the assessee and verification carried out, the total amounts paid for various Order in Originals are summed up in the table given below:-

S.No	Name of the Tenant/M/s	Amount paid towards O/O.No. 14/2017 dt 10.02.2017	Amount paid towards O/O.No. 14/2017 dt 10.02.2017	Amount paid towards O/O.No. 14/2017 dt 10.02.2017	Amount paid towards O/O.No. 14/2017 dt 10.02.2017	Total Amount paid	Challan No. & Date
1	Indus League (Indigo Nation)	1,15,620	1,72,764	1,55,736	---	4,44,120	50803 date 06.08.2012
2	Paid by self	2,97,345	--	--	--		50047 dated 17.04.2017

From the above, it appears that although they have made excess payments of Rs.74,825/- and Rs.85,479/- in relation to Order in Original Nos.15/2017 and 16/2017 respectively, the assessee still has to pay a balance amount of Rs.1,57,574/- in respect of the Order in Original No.14/2017 so as to fulfill the requirement of payment of pre-deposit i.e. 7.5% of the total liability confirmed in that order."

9. From the reading of the above report, it is evident that the petitioner has complied with the requirements of Section 35 F of the Central Excise Act, 1944 as made be applicable for appeals against order passed under the provisions of the Finance Act, 1994 insofar as Order in Original Nos.15/2017 and 16/2017 dated 10.02.2010 is concerned. Thus, the appeal should have been numbered. However, there is delay. According to the Superintendent (Legal), there is a deficit of Rs.1,57,574/- insofar as pre-deposit appeal against Order in Original No.14/2017 dated 10.02.2010 and therefore the petitioner should be called upon to pay a balance amount.

10. Learned Counsel for the respondent submits that if the petitioner pay the aforesaid deficit amounts of Rs.1,57,574/- the appeal against Order in Original No.14/2017 dated 10.2.2017 all the 3 appeals filed by the petitioner will be numbered and taken up for final hearing.

11. According to the petitioner, the amount paid by the petitioner are as follows:-

S.No .	Amount paid towards O/O.No.14/2017 dt 10.02.2017	Amount paid towards O/O.No.15/2017 dt 10.02.2017	Amount paid towards O/O.No.15/2017 dt 10.02.2017
1	7,76,383	10,72,847	6,45,735
2	10,73,728	7,79,362	4,85,729
3	2,97,345	Nil	Nil

12. It is submitted by the learned counsel for the petitioner that the petitioner had paid a service of Rs.7,76,383/- in respect of the period April 2008 to January 2010 as against the pre-deposit requirement of Rs.10,73,728/- and hence a pre-deposit of Rs.2,97,345/- was payable by the petitioner.

13. Both the learned counsel for the petitioner and the respondents confirmed that there is a dispute regarding the

amount paid for service rendered to M/s.Indus League (Indigo Nation) and M/s.Adidas. In para 5 of the report it has been stated as under:

" However, on perusal of the ST-3 returns for the period 2012-13 (April-September) filed on 19.11.2012, it appears that the said amount of Rs.4,50,724/- remitted vide Challan No.50783 dated 06.07.2012 has been utilized for discharging Service Tax of the relevant period. They have also failed to submit detailed workings for the period from April to June 2012 in order to substantiate their claim. Therefore, in absence of bifurcated details of due liability for April-June 2012-13, it is not possible to verify whether the said payment of Rs.4,50,724/- was made for the past period or for the period April to June 2012."

14. I have considered the arguments advanced by the learned counsel for the petitioner and the respondents.

15. Though there is appear to be a deficit in pre-deposit of amount in so as far as the Order in Original No.14/2017 is concerned as the report filed, it is noticed that the petitioner has paid amounts in excess in their appeal against the order in Original Nos.15 & 16/2017 for a sum of Rs.74,825/- and Rs.85,479/-. Thus, there is excess payment of Rs.1,60,304/- by the petitioner which amount can be allowed to be adjusted against the amount of pre-deposit in the petitioner's appeal against Order in Original No.14/2017 dated 10.2.2017.

16. According to the petitioner, it has paid amounts in excess in their appeal against the order in Original No.14 of 2017 dated 10.02.2017.

17. The impugned communication dated 03.05.2017 also states that the appeal has been filed with a delay of one day. However, there is no explanation forthcoming from the petitioner on the same.

18. Therefore, the petitioner is given liberty to file appropriate applications for condoning the delay or in the alternative, give their explanation as to why there was no delay in filing the appeals and how the amounts paid by the petitioner in appeal against the Order in Original No.14 of 2017 was in excess of 7.5% required to be pre-deposited under Section 35 F of the Central Excise Act, 1944 for entertaining the aforesaid appeal .

19. The petitioner shall file such applications or representation as the case may be with the office of the 1st respondent within a period of four weeks from the date of receipt of a copy this order.

20. The office of the 1st respondent shall consider the same. The office of the 1st respondent shall also consider whether the excess amount paid in so far as appeal against the Order in Original No.15-16 of 2017- dated 10.02.2017 can be adjusted appeal against deficit pointed out in Order in Original No.14 of 2017- dated 10.02.2017.

21. In case, the office of the 1st respondent still finds there was deficit in the pre-deposit amount by petitioner against its appeal against the Order in Original No.14 of 2017- dated 10.02.2017, the petitioner shall be informed about the same in writing consequent to which the petitioner shall deposit the deficit amount within a period of one week from the date of receipt of such communication from the office of the 1st respondent.

22. On such deposit, the appeals shall be numbered forthwith subject to formal order for condoning the delay if such application is required and dispose the appeals within a period of three months thereafter.

23. Writ Petition stands allowed with the above observation. No cost. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1.The Commissioner of Service Tax (Appeals - I)
Newry Towers,
2054, I-Block,
2nd Avenue, 12th Main Road,
Anna Nagar West,
Chennai 600 040.

2. The Additional Commissioner of Service Tax
Service Tax II Commissionerate,
2054, I Block,
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+lcc to M/s.Hema Murali Krishnan, Advocate Sr.2081

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