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IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION
ORIGINAL SIDE

CEXA/4/2021
IA NO.GA/2/2021

THE COMMISSIONER, CGST & CS, KOLKATA NORTH COMMISSIONERATE
VS.
COAL INDIA LIMITED

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE SUPRATIM BHATTACHARYA
Date : September 19, 2022.

Appearance:
Ms. Manasi Mukherjee, Adv.
... for the appellant.

Mr. Abhrotosh Majumder, Sr. Adv.
Mr. Pranit Bag, Adv.
Mr. S.K. Singhi, Adv.
Ms. Riti Basu, Adv.
Ms. Chandrani Das, Adv.
...for the respondent.

The Court :- This appeal by the revenue filed under Section 35B of the Central Excise Act, 1944 (the Act, for brevity) is directed against the order dated 25th June, 2019 passed by the Customs, Excise and Service Tax Appellate Tribunal, Kolkata Zonal Branch, Kolkata in Service Tax Appeal No.ST/111/2009-DB.

The revenue has raised the following substantial question of law for consideration :-

a) Whether the Tribunal was justified in remanding the matter back for limited purpose of calculation of service tax leviable for normal period of limitation on cum tax basis?

We have heard Ms. Manasi Mukherjee, learned standing Counsel appearing for the appellant and Mr. Abhrotosh Majumder, learned senior Counsel for the respondent.

The short question which falls for consideration is whether the extended period of limitation could have been invoked by the appellant department for issuing show cause notice on the alleged ground that the appellant has not paid service tax on the "Management of Business Consultancy Service". In response to the show cause notice, the respondent/assessee contended that they are holding a company in liaison with subsidiary companies on several matters and consequent to the amendment in the definition of "Management of Consultancy Service" redefined as "Management of Business Consultancy Service" with effect from 1st June, 2007, the respondent was in the bona fide belief that the services provided to the subsidiary companies would be taxable in the said category on and from 1st June, 2007.

Further, the respondent recovers dues from the subsidiary companies by way of adjustment at the end of the financial year and they had applied for and obtained registration in the category of "Management of Business Consultancy Service" on 18th February, 2008. The case of the respondent is that the consultancy services are not in relation to the management of any individual subsidiary organization or concern - rather the same or for the Coal Industries as a whole.

Therefore, the assessee would state that they are not liable to service tax in the category of "Management Consultancy Service" for the period prior to 1st

June, 2007. With regard to invocation of the extended period of limitation, the assessee contended that they have voluntarily taken the service tax registration in the category of "Management of Business Consultancy Service" in respect of 'apex office charges' charged from subsidiary companies and they placed reliance on the decision of the Hon'ble Supreme Court in *Commissioner of Central Excise, Chennai-I vs. Chennai Petroleum Corporation Limited reported in 2007 (211) E.L.T. 193 (SC)* for the proposition that there can be no presumption that public sector undertakings like the respondent have any intention to evade payment of duty. They also relied on other decisions of the Tribunal to support the said contention. The adjudicating authority did not agree with the stand taken by the respondent and confirmed the proposal in the show cause notice. Challenging the same, the assessee filed appeal before the learned Tribunal.

The only point which was argued before the learned Tribunal was whether the extended period of limitation could have been invoked by demanding service tax prior to the appellant getting themselves registered under the category of "Management of Business Consultancy Service". The learned Tribunal on going through the factual matrix found that there is no evidence to show that the service tax has been intentionally not paid and no allegation of suppression has been made to invoke the extended period of limitation. Therefore, the Tribunal was satisfied that there is no case of suppression and, accordingly, allowed the appeal filed by the respondent remanding the matter to the authority for limited purpose of calculation of service tax leviable for normal period of limitation on cum tax basis.

Learned standing Counsel appearing for the appellant would strenuously contend that the intention of the party should be examined and the contention that they are under the bona fide belief that the services are not taxable cannot be accepted. In support of her contention, learned standing Counsel placed reliance on the decision in the case of *Assistant Commissioner of Service Tax vs. Krishna Poduval reported in (2005) 199 CTR Kerala 581* and the decision in the case of *M/s. K. Madhav Kamath Brother & Co. vs. The Assistant Commissioner of Central Excise, Hubli Division in C.E.A. No.201 of 2013 dated 17th December*, 2014 *(Karnataka).* Reliance was also placed on the decision of the learned Tribunal in the case of *M/s. Jaisingh & Neelam Singh Chauhan vs. CCE, Kanpur reported 2013 (3) ECS (193) (Tri.-Del.)* and *M/s. Ankita Constructions vs. C.C.E., Raipur reported in 2014 (4) ECS (212 (Tri.-Del.).*

Learned senior Counsel appearing for the respondent submitted that the learned Tribunal after taking into consideration the facts and circumstances of the case clearly recorded that there was no allegation of suppression made by the respondent, a public sector undertaking, with the intention to evade payment of tax. The decision in Chennai Petroleum Corporation Limited was pressed into service.

After we have elaborately heard the learned Counsel for the parties and carefully perused the show cause notice, the reply given by the assessee and the order in original as well as the order passed by the learned Tribunal, we fully agree with the view taken by the learned Tribunal that there is no specific allegation made against the respondent that they had willfully avoided payment of tax by suppressing the material facts with an intent to evade payment of tax. In the absence of such allegation, merely using the expression 'suppression' cannot be a ground for invoking the extended period as held by the Hon'ble Supreme Court in Chennai Petroleum Corporation (supra).

Further, we note that the amendment to the Finance Act was with effect from 1^{st} June, 2007. On 13^{th} February, 2008 the respondent obtained registration under the category "Management of Business Consultancy Service" by amending their existing registration. It is thereafter on 25^{th} March, 2008 the department had addressed the assessee. On 31^{st} March, 2008 tax has been remitted to the department and thereafter the assessee intimated the department on 1^{st} April, 2008. As could be seen from the records, enquiry by the Audit Wing of the appellant department commenced after 1^{st} April, 2008 ultimately resulting in issuance of show cause notice on 20^{th} October, 2008 for which reply was given on 18^{th} November, 2008 specifically contending that the extended period of limitation could not have been invoked.

The above facts clearly demonstrate that there was no willful suppression of material facts made by the respondent with an intent to evade payment of tax.

The decision in the case of Krishna Poduval (supra) cannot be applied to the facts and circumstances of the case. On facts, in the said decision the Court found that the assessee therein was guilty of suppression and, therefore, deserves no sympathy. The decision in the case of K. Madhav Kamath Brother & Co. (supra) was rendered while considering the correctness of the factual finding recorded by the learned Tribunal which was against the assessee. The Court after considering the facts noted by the learned Tribunal upheld the decision of the Tribunal wherein in was held that it is not a case of bona fide mistake. Further, in the said decision, the decision of the Hon'ble Supreme Court in the case of *Union of India vs. M/s. Rajasthan Spinning & Weaving reported in (2009) 13 SCC 448* was relied on. The said decision was on the issue as to whether the assessee can be exonerated from paying payment of penalty merely on the ground that tax being remitted prior to issuance of show cause notice. In the case before us, the facts are entirely different as noted above, more particularly from the various dates and events. Therefore, the decision cannot be applied to the facts of the case on hand.

The decision of the learned Tribunal in the case of M/s. Jaisingh & Neelam Singh Chauhan (supra) as well as M/s. Ankita Constructions (supra) are also distinguishable on facts as both the cases relate to levy of penalty.

Thus, we are of the considered view that the learned Tribunal rightly granted relief in favour of the assessee and the order does not call for any interference.

Accordingly, the appeal filed by the revenue is dismissed and the substantial question of law is answered against the revenue.

The application for stay being IA No.GA/2/2021 stands closed.

(T.S. SIVAGNANAM, J.)

(SUPRATIM BHATTACHARYA, J.)

S.Pal/S.chandra