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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 20.10.2021

Pronounced on : 18.02.2022

CORAM

THE HON'BLE MRS.JUSTICE PUSHPA SATHYANARAYANA

AND

THE HON'BLE MR.JUSTICE KRISHNAN RAMASAMY

W.A. No.2196 of 2021

and

C.M.P.No.13897 of 2021

M/S. K & K Contech Engineering Pvt. Ltd.,
Rep. by its Director:
No.3203, 1st Floor, U.K.Towers,
Mount Poonamallee Road,
Kattupakkam,
Chennai 600 056.

... Appellant

vs

1. Customs Central Excise and Service Tax
Settlement Commission,
Additional Bench, II Floor, Narmada Block,
Custom House, No.60, Rajaji Salai,
Chennai 600 001.

2. The Commissioner of Service Tax,
Service Tax III Commissionerate,
Newry Towers, Plot No.2054,
12th Main Road, II Avenue, Anna Nagar,
Chennai 600 035.

3. M/S.Charoen Pokphand (India) Pvt.Ltd.,
F-2, No.40, II Street, Sparton Nagar,
Mogappair West,
Chennai 600 037.

... Respondents

Prayer: Writ Appeal is filed under Clause 15 of the Letters Patent, against the order of the learned single Judge dated 28.06.2021 passed in W.P.No.727 of 2018.



Prayer in W.P.No.727 of 2018:

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records relating to the impugned Order No.64/2017- ST dated 29.09.2017 passed by the 1st respondent and quash the same in so far as it directs payment of interest of Rs.10,61,903/- taking the period for levy of interest from November 2012 to 05-07-2014 instead of the period 01-03- 2014 to 05-07-2014 as claimed by the petitioner in their application for settlement before the 1st respondent.

For Appellant : Mr.Nagarajan Krishnamurthy
for Mr.K.Jeyachandran

For Respondents : Ms.R.Hemalatha
Senior Standing Counsel
(Customs & Excise)
for R1 & R2
Ms.V.Pramila for R3

JUDGMENT

(Delivered by Krishnan Ramasamy, J.,)

This Writ Appeal has been directed against the order passed by the learned Single Judge of this Court, dated 28.06.2021 in W.P.No.727 of 2018.

2. The above said Writ Petition was filed by the appellant herein, seeking for the issuance of Writ of Certiorari, to call for the records relating to the impugned order No.64/2017-ST dated 29.09.2017 passed by the 1st respondent and quash the same.

3. The learned Single Judge, after hearing both the parties, vide order dated 28.06.2021, dismissed the Writ Petition. Aggrieved over the said order, the appellant herein filed the present Writ Appeal.

4. The learned counsel appearing for the appellant contended that the appellant undertook 'Works Contract Service' during the period from October 2012 to December 2013 and paid a sum of rupees Rs.81,59,255/- being 50% towards service tax in time. While so, the service Recipient also paid a sum of Rs.81,59,255/- being the balance 50% of the service tax in time



4.1 The learned counsel for the appellant further contended that the respondent-Department opined on 05.07.2014 that the payment made by the Recipient is not proper, and therefore, the amount paid towards service tax by the service Recipient under the reverse charge mechanism, was re-credited in the appellant's account on 28.02.2014. Since the amount was re-credited in the appellant's account only with effect from 28.02.2014, the Department made a claim for interest from December 2013 to 28.02.2014.

4.2 The learned counsel for the appellant further contended that there was no due on the part of the appellant, the entire service tax (100%) was paid on the due date itself, (i.e. 50% of the tax amount paid by the appellant and the balance 50% by the service Recipient, the 3rd respondent herein). The Department also subsequently re-credited the said 50% of the amount in the appellant's account with effect from 28.02.2014 from the date on which, original payment was made by the service Recipient, i.e. from December 2013. There is no financial loss to the Government, as, it is only a wrong payment made for the same transaction by the service Provider and the service Recipient. However, this aspect was not considered by the learned Single Judge and also by the Settlement Commission and wrongly directed the appellant to pay the interest from the due date to till 05.07.2014. Therefore, the learned counsel for the appellant contended that the appellant is not liable to pay the interest and to that extent, the order passed by the Settlement Commission is liable to be set aside.

5. Per contra, the learned Senior standing counsel appearing for the respondents contended that the appellant is liable to pay 100% of service tax. In fact, the appellant raised invoices for 100%, however, remitted tax only for 50%. He fairly admitted that the service Recipient has paid 50% of tax amount. However, the said 50% of the service tax paid on the transaction cannot be booked in the appellant's account. It is only the appellant, who is liable to pay the entire tax amount and not the service Recipient. Normally, if there are any discrepancies with regard to the remittance of the service tax by way of reverse charge mechanism, then, the said amount will be lying to the credit of the Recipient, and, it will be considered, as if, the balance 50% has not been paid by the service provider and accordingly, the Department would charge interest and there can be no challenge against the same. Both the Settlement



Commission as well as the Writ Court have rightly considered this aspect in a proper perspective and passed the order and the same warrants no interference. Therefore, the learned Standing Counsel prayed for dismissal of the Writ Appeal.

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6. Heard the learned counsel for the parties and perused the entire materials available on record.

7. The Settlement Commission after hearing both the parties, passed an order, dated 29.09.2017, directing the appellant to pay the interest for 50% of the service tax from the month of December 2013 to 05.07.2014. This order was challenged before the Writ Court. The Writ Court also, after hearing both sides, confirmed the said order.

8. The only issue that arises in this case is, whether the reverse charge mechanism is applicable or not?

9. Admittedly, a sum of rupees 81,59,255/- being 50% of the service tax was paid in time by the appellant, and the balance amount of 50% was directly paid to the Service Tax Department by the service Recipient under the premise that the reverse charge mechanism was applicable.

10. In the present case, as admitted by both the parties, the reverse charge mechanism is not applicable to the appellant company. The reverse charge mechanism is applicable only to the individuals, Hindu Undivided Family, etc., where, the Department would normally adjust the amount paid by the service Recipient and re-credit the same to the service provider's account. Though it is strongly contended that the 50% amount paid by the service recipient cannot be re-credited to the appellant, the fact remains that the Department has re-credited the said amount from the service recipient's account to the appellant's account with effect from 28.02.2014.

10.1 Thus, when the service provider (appellant) has paid entire 50% of the amount towards service tax and the service Recipient also paid the balance 50% of the service tax in time directly to the Service Tax Department on the assumption that the reverse charge mechanism is applicable, and when the Department also re-credited the said 50% of the service tax from the service recipient's account to the service provider's (appellant's account) with effect from 28.02.2014, instead of giving effect to the same from the date, on which, original payment was made by the service recipient, it is not open to the



Department to turn down and say that reverse charge mechanism is not applicable, thus, the appellant is liable to pay interest on the belated payment.

10.2 That apart, the facility for payment of service tax for single transaction both by the service recipient and service provider at 50% each is meant only for the convenience of the assessee (both by the service recipient and service provider). In the present case, as per the TNGST Act, 100% service tax has to be paid by the service provider, but, there is no prohibition in the Act for the service recipient to pay the service tax liability directly to the Department in the account of service provider and merely because, such facility has not been extended to the Companies, and it was limited to the individuals, Hindu Undivided Family, etc., it does not mean that there was complete bar for the service recipient to remit the service tax liability of the service provider in their (appellant's) account, in the case of an assessee, being a company, when the fact remains that, ultimate service tax has to be collected from the service recipient by the service provider and remit back the same to the Department.

10.3 Therefore, we hold that the procedure adopted by the service recipient cannot be found fault with as long as there is no specific bar under the Act to make tax remittance directly to the account of the service provider. Further, service recipient admitted that, they misunderstood that reverse charge mechanism is applicable to the appellant's Company and this mistake happened only in the first transaction and subsequently, 100% of the service tax has been collected by the service provider from the service recipient and remitted the same to the Department without any default/delay. In such view of the matter, the contention of the respondent-Department that 100% service tax has to be collected from the service recipient by the service provider and the same has to be remitted to the Department does not hold water.

10.4 Further, we do not find any logic on the part of the Department for not having re-credited the 50% of the service tax to the Department, immediately, on the date, on which original payment was made by the service recipient to the service provider's account, but given effect to the same by choosing a particular date in the year of 2014 as per their whims and fancies. In the event, the Department had returned the said amount to the service Recipient, or the payment was made to the appellant's account other than by the service recipient, then, the contention of the Department will have substance. Therefore,



obviously, there is no financial loss caused to the exchequer. In fact, the entire amount of 100% towards service tax was paid to the Department in time.

10.5. In view of the aforesaid findings, we do not find any merit in the submissions made on behalf of the respondents and all these aspects have not been considered by the Settlement Commission as well as the learned single Judge. Therefore, the order of the learned Single Judge as well as the impugned order 28.6.2021 passed by the 1st respondent are hereby set aside.

11. In the result, the Writ Appeal stands allowed. No costs. Consequently, connected CMP is closed.

SD/-
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

To

1. The Customs Central Excise and Service Tax
Settlement Commission,
Additional Bench, II Floor, Narmada Block,
Custom House, No.60, Rajaji Salai,
Chennai 600 001.

2. The Commissioner of Service Tax,
Service Tax III Commissionerate,
Newry Towers, Plot No.2054,
12th Main Road, II Avenue, Anna Nagar,
Chennai 600 035.

+1cc to Mr.K.Jayachandran, Advocate Sr.10880

W.A. No.2196 of 2021

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srg 09/03/2022