IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2024

CORAM

THE HONOURABLE Mr. JUSTICE R. MAHADEVAN
AND
THE HONOURABLE Mr. JUSTICE MOHAMMED SHAFFIQ

C.M.A.Nos.1963 to 1967, 1971, 1972 and 1354 of 2014
AND
M.P.Nos.1 of 2014 in C.M.A.Nos.1963 to 1967, 1971, 1972 and 1354 of 2014
AND
M.P.Nos.1 of 2015 in C.M.A.Nos.1963, 1964, 1966, 1967 of 2014
AND
C.M.P.No.5369 of 2018 in C.M.A.No.1964 of 2014

C.M.A.No.1963 of 2014

M/s.Seaport Logistics Private Limited,
Rep. by its Director,
M.S.Saifudeen,
No.42, 1st Floor, Moore Street,
Chennai 600 001. .. Appellant

Vs.

The Commissioner of Service Tax,
No.692, MHU Complex,
Anna Salai, Nandanam,
Chennai 600 035. .. Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 35G of the Central Excise Act, 1994, to set aside the Misc. Order No.155/2011 dated 29.03.2011 passed in Appeal No.ST-270 of 2007 by the CESTAT, South Zonal Bench, Chennai.

C.M.A.Nos.1963 to 1967 of 2014

For Appellant : Mr.B.Sathish Sundar

For Respondent : Mr.V.Sundareswaran
Senior Panel Counsel

C.M.A.No.1971 of 2014

For Appellant : Mr.N.Viswanathan

For Respondents : Mr.V.Sundareswaran
Senior Panel Counsel for R2
R1- Tribunal

C.M.A.No.1972 of 2014

For Appellant : Mr.P.Santha seelan

For Respondent : Mr.V.Sundareswaran
Senior Panel Counsel

C.M.A.No.1354 of 2014

For Appellant : Mrs.P.Jayalakshmi
for Mr.K.Magesh

For Respondent : Mr.V.Sundareswaran
Senior Panel Counsel

COMMON JUDGMENT

The common questions of law raised in all these appeals would run thus:

(i)Whether the impugned order suffers from non-application of mind to relevant factors and made on the basis of irrelevant factors thereby vitiating the entire proceeding thereby rendering the same unsustainable in law?

(ii)Whether the impugned order suffers from the vice of overlooking binding precedent of the Hon'ble Karnataka High Court on the very same issue?

(iii)Whether the impugned order is unsustainable inasmuch as it has overlooked the dismissal of revenue's appeal preferred in the case of Velji P & Sons Pvt. Ltd vs. CCE by the Hon'ble Supreme Court?

(iv)Whether the impugned order has erred in overlooking the purport and intent of the prospective amendment brought in by the Parliament with effect from 1.7.2010 amending the definition of port services by bringing into tax any service rendered within a port or other port?

(v)Whether the impugned order has erred in failing to consider the submission filed by the appellant thereby overlooking relevant factor and suffers from the vice of non-application of mind?

2. All these civil miscellaneous appeals are filed challenging the common order passed by the Customs, Excise and Service Tax Appellate Tribunal, Chennai, insofar as it classifies the services rendered by the appellants as "port services" within the meaning of Section 65(105)(zzzl) read with 65(105)(zn) of Chapter V of the Finance Act, 1994 (in short "the Act").

3. The appellants were engaged in the activities of Stevedoring and obtained Service Tax registration for Cargo Handling Services, Clearing and Forwarding Agent Services and other services at Chennai Port and other Ports. Admittedly, all these appeals relate to the period prior to 01.07.2010. It may be relevant to refer to the definition as it stood prior to 01.07.2010 and post 01.07.2010, which read as under:

Prior 01.07.2010 :

"65. Definitions

"port service" means any service rendered by a port or other port or any person authorised by such port or other port, in any manner, in relation to a vessel or goods;"

105 "(zn) to any person, by a port or any person authorised by the port, in relation to port services, in any manner;"

Post 01.07.2010 :

65. Definitions

-----

(82) "port service" means any service rendered within a port or other port, in any manner.

----

(105) (zn) to any person, by any other person, in relation to port services in a port, in any manner:

Provided that the provisions of section 65A shall not apply to any service when the same is rendered wholly within the port;"

3.1. We have extracted the provision relating to Port Services in the Finance Act, 1994, prior to 01.07.2010 and post 07.07.2010 only to show that the definition and taxability, which were limited to the services rendered by Port or any other person authorized by such port in relation to vessel or goods, were expanded from 01.07.2010 to include any service rendered within a port or other port, in any manner.

4. It is made clear that we are concerned only in respect of the period prior to 01.07.2010 in all these appeals. In respect of the period prior to 01.07.2010, the scope of port service as it then stood, had arisen for consideration before the Service Tax Appellate Tribunal in ***Velji P. and Sons (agencies) Pvt. Ltd. and Ors. Vs. C.C.E. Bhavnagar [2007 (8) STR 236]*** wherein, relying upon the order of the Tribunal in ***Homa Engineering Works vs. CCE Mumbai [2007 (7) STR 546],*** it was held as follows:

> *"4. ..... they are licensed by Gujarat Pipavav Port Limited to carry out such activities. The appellant's main contention is that as per the definition of "Port Services" contained in Section 65(82) of the Act, port services are required to be rendered by Port or any other person 'authorized (emphasis provided) by such port in relation to vessel or goods. As such, it has been contended before us that the services required to be provided by the Port are port services, for which any other person may be authorized to step into shoes of the Port. Inasmuch as the services being rendered by the appellant are not required to be rendered by the port, there is no authorization by the Port to the present appellant to render the said services. It cannot be concluded that the appellant is providing any port services. Further, licenses issued by the Port authorities to the appellant cannot be considered as authorization inasmuch*

as the licence issued is basically to enter into the Port area.

-----

6. After carefully considering the submissions made by both the sides, we find that the issue as to what service would get covered by the port services, scope of the "port service" was examined at length by the Tribunal in the case of Homa Engineering Works referred supra. In para 8 of the said judgment it has been observed that taxable services under the net of "Port Service" means any service rendered by a port or any person authorized by such port. The services being provided by the appellant are handling, stevedoring, loading, unloading, tug hire and labour arrangement, Admittedly, such services are not required to be provided by the Port under The Major Port Trust Act, 1963. A perusal of the Section 35 of the said Act, as reproduced in the case of Homa Engineering Works, clearly shows that power of the Board to execute the works and provide appliances do not include the above activities being undertaken by the appellant. As such, it cannot be said that the services being provided by the appellant were covered by the Port services, Further, the Tribunal in the above case has observed that the authorization from the Port must be in respect of the services which the port itself is required to provide as such authorization would make an assessee step into shoes of the Port, Having already observed that such services were not required by the port, any authorization by the Port cannot convert the services into port services. In any case, we find that there is no authorization by the Port to the appellant to conduct the services on his behalf Licenses issued by the Port authorities cannot be considered as authorization. Such licenses are issued by the Port authorities to all the persons working in the Port to ensure the safety and security of the Port Area and does not confer any power or authority of the Port on the person so issued with the licence. If the licences issued by the Port are taken as authorization, then such licences issued to Stevedores, ship chandlers, labourers, repairers of the vessels etc. would also become authorized persons by the Port to render services as Port services.

-----

9. In the light of the foregoing discussions and applying the ratio of law declared by the Tribunal in the case of Homa Engineering Works, we are of firm view that activities undertaken by the appellant does not fall under the category of Port Services."

5. The above order of the Tribunal was carried in appeal (Civil) No(s).2429-2430 of 2008 by the Revenue to the Hon'ble Supreme Court and the

said appeal was dismissed on 24.03.2008 holding as under :

> *"The Tribunal, relying upon its own decision in the case of M/s Homa Engineering Work Vs. CCE, Mumbai, has allowed the present appeal filed by the assessee.*
>
> *Against the aforesaid case in M/s. Homa Engineering Works vs. CCE, Mumbai, Revenue has not filed any appeal in this Court.*
>
> *In view of this, this appeal is dismissed."*

6. It was submitted by the learned counsel appearing for both sides that the issue involved in all these appeals is no longer *res integra* and stands covered by the aforesaid decision of the Hon'ble Supreme Court.

7. In view thereof, the order of the Appellate Tribunal is liable to be set aside and is thus, set aside. Accordingly, all these appeals stand disposed of and the substantial question of law involved herein are answered in favour of the appellants. No costs. Consequently, connected miscellaneous petitions are closed.

[R.M.D., J.] [M.S.Q., J.]

03.01.2024

Speaking (or) Non Speaking Order
Index:Yes/No
Neutral Citation: Yes/No
gya/spp

R.MAHADEVAN, J.
AND
MOHAMMED SHAFFIQ, J.

gya/spp

To

1.The Customs, Excise and Service Tax Appellate Tribunal,
Larger Bench, Chennai.

2.The Commissioner of Service Tax,
No.692, MHU Complex,
Anna Salai, Nandanam,
Chennai 600 035.

C.M.A. Nos.1963 of 2014 and etc., batch

03.01.2024