

(2015) 04 CESTAT CK 0002

Customs, Excise And Service Tax Appellate Tribunal Principal Bench, New Delhi

Case No: Service Tax Stay Application No. 54001 Of 2014, Service Tax Miscellaneous No. 55336 Of 2015, Service Tax Appeal No. 55576 Of 2014

M/s. Lakhlan And Qureshi
Construction Co.Vs C.C.E.& S.T.,
Jaipur-I

APPELLANT

Vs

RESPONDENT

Date of Decision: April 7, 2015

Acts Referred:

- Finance Act, 1994 - Section 77, 78

Hon'ble Judges: G. Raghuram, J; R. K. Singh, Technical Member

Bench: Division Bench

Advocate: Rupender Singh, Suchitra Sharma

Final Decision: Disposed Of

Judgement

1. Miscellaneous Application has been filed by the appellant- assessee requesting for early hearing of Stay Application as Revenue is pressing hard for recovery and it (the appellant - assessee) has a strong prima facie case in its favour. In the given facts and circumstances, we allow the

Miscellaneous Application.

2. At the stage of considering the Stay Application, in view of the peculiar facts and circumstances of this appeal and after hearing the Id. consultant

for the appellant and the Id. Departmental Representative for the respondent/Revenue, we dispose of the substantive appeal itself.

3. A Show Cause Notice was issued on 19.10.2012 proposing classification of the services provided by the appellant during 01.04.2009 to 31.03.2012

either as 'Construction of Residential Complex' service or/and 'Works Contract' service. A service tax demand of Rs.2,27,72,546/- was proposed. The

Show Cause Notice also proposed levy of interest and penalties as specified therein.

4. The impugned adjudication order dated 28.03.2014 by the C.C.E., Jaipur-I confirmed service tax demand of Rs.2,27,72,546/- and also confirmed

demand for interest and penalties under Sections 77 and 78 of the Finance Act, 1994

5. The appellant/assessee failed to file a response to the Show Cause Notice dated 19.10.2012 and thus failed to rebut the allegations therein including

on the classification or the valuation of the alleged taxable services. Para 11 of the impugned order records that the petitioner/appellant failed to turn

up and avail the opportunity of personal hearing as well. This paragraph records that on 25.09.2013, 09.10.2013 and 29.10.2013, being the dates

scheduled for personal hearing, the appellant sought adjournments on one ground or the other.

6. At the hearing of the matter today, Shri Rupender Singh, Id. counsel contends that the impugned order is unsustainable on merits and also on the

issue of bar of limitation, for a part of the period in issue.

7. Having carefully considered the material on record, we are of the view that a determination on the merits of the appeal invites analysis of disputed

questions of facts and interpretation of the contracts in issue; analysis and application of exemption and abatement notifications; and of the Valuation

and Composition Rules which were in operation. Such analysis of the relevant factual matrix and appreciation of relevant provisions of the Act and

Statutory Rules is more appropriately done in primary adjudication by the Respondent Commissioner. The appellant/ assessee, by its consistent

conduct of non-cooperation and non-participation in the adjudication proceedings, obstructed the due course of adjudication. This conduct of the

appellant is clearly condemnable and leads to clearly avoidable waste of appellate time, involved in this Tribunal taking a first call on the analysis of the

facts and law, applicable in this appeal.

8. In the circumstances, we are of the considered view that the appellant could be given one last opportunity to submit its response to the Show Cause

Notice dated 12.04.2012, but on terms as to heavy costs on account of its continuous and sustained conduct of non- cooperation with the adjudication

process, at the primary level.

9. We therefore set aside the impugned order but on condition that the appellant deposits Rs.1 lakh towards costs to the credit of Revenue within 45

days from today and files its written response to the Show Cause Notice, without further excuse on any grounds whatsoever. The response of the

appellant shall reach the respondent adjudicating authority within 45 days from today. If the appellant fails to deposit Rs.1 lakh within time specified

herein or fails to file its written reply within the stipulated time, this appeal stands dismissed and the impugned adjudication order stands confirmed. If

the appellant complies with both the above conditions, the adjudicating authority shall issue a fresh notice for personal hearing of the appellant which

the appellant shall attend without seeking adjournment for any reason whatsoever, on the scheduled date intimated to it for such hearing. Thereafter

the respondent shall dispose of the matter on the material available on record and without reference to the impugned order, dated 28.03.2014. We

dispose of the appeal as above, with the consent of both parties.