CUSTOMS, EXCISE AND SERVICE TAXAPPELLATE TRIBUNAL CHENNAI

REGIONAL BENCH – COURT NO. III

Service Tax Misc. [ROM] Application No. 40360 of 2018
(on behalf of Appellant)
In
Service Tax Appeal No. 00261 of 2011

M/s. S. Gurumurthy : Appellant
"Shreyas", 26, Radhakrishnan Salai,
9th Street, Mylapore,
Chennai – 600 004

VERSUS

The Commissioner of Central Excise, **: Respondent**
Chennai-III Commissioenrate,
26/1 Mahatma Gandhi Road,
Chennai – 600 034

APPEARANCE:

Shri. N. Venkataraman,Advocate for the Appellant

Shri. K.Veerabhadra Reddy, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. P. VENKATA SUBBA RAO, MEMBER (TECHNICAL)
HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

MISC ORDER NO. 40438 / 2019

DATE OF HEARING: 31.07.2019

DATE OF DECISION: **09.09.2019**

PER: P. DINESHA

By this miscellaneous application, the applicant is seeking the recalling of the Final Order No.40440/2018, dated 22.02.2018 passed by this Bench on the ground that the said order suffers from rectifiable mistakes. When the matter was taken up for hearing Shri N. Venkataraman, Learned senior advocate appeared for the applicant-assessee and Shri K. Veerabhadra Reddy, learned ADC (AR) appeared for the Revenue.

2. Learned senior advocate took us through the synopsis filed before this court during the hearing and also through the compilation of case laws and *inter alia* contended that the appellant had furnished copy of the invoices and agreements wherever available; that the appellant provided legal services to most of his clients; the conclusion of this Bench that the appellant had rendered other than legal services is an apparent mistake; that there was also an argument advanced, namely, vide Notification No.15/2002 effective from 01.08.2002, tax could be levied for and from 01.08.2002 the legal services rendered to Dishnet, which was for a period of four years; that in support, an order by Delhi Bench of the CESTAT was also referred to which is also not at all considered by this Bench, that therefore, the demand, if any, could never be confirmed at least for the prior period January, 2000 to August, 2002; that the appellant had furnished documents in support of his legal services rendered to M/s. Essel Mining Co. Ltd., M/s. Gujarat Sidhee Cement Ltd., and also Express Publication of (Madurai) Ltd., which are not at all considered and that non-consideration has rendered the impugned final order a non-speaking order; that with regard to the issue of revenue neutrality, the appellant had relied on a decision of the jurisdictional High Court, which has not all been referred to nor considered and such non-consideration has rendered the impugned final order a non-speaking order; and, therefore, the non-consideration of the above orders as well as documents has resulted in the impugned final order being erroneous and amenable to rectification.

3. *Per contra*, learned departmental representative vehemently opposing the contentions of the learned senior advocate and referring to the impugned order of this Bench, contended that this Bench has passed the impugned final order after hearing both sides and after perusing the appeal records. There is no error apparent on the record and, therefore, no intervention is required. He also contended

that interfering with the impugned final order would amount to review, which is not permissible under law.

4. We have considered the rival submissions, gone through the various decisions relied on by the learned senior advocate and we have also gone through the impugned order. After going through the synopsis as pointed out by learned senior advocate, we note that there is no mention nor discussion as to the applicability or otherwise of various decisions relied on by the appellant in the impugned final order. There is no dispute that non-consideration of a judgment of the jurisdictional High Court or Supreme Court is itself a mistake/error on the face of the very order which could be rectified, as held by various higher fora including the Hon'ble Supreme Court and one such case is *M/s. V Guard Industries Ltd., Vs Commercial Tax Officer, Coimbatore* reported in *2003 (158) E.L.T.806 (Mad.)*. Apparently, there is no discussion also on various documents like invoices etc., relied on by the applicant and furnished in the paper compilation, suffice it to say that non-consideration of the same amounts to passing a non-speaking order.

5. For the above reasons, we are of the *prima facie* view that impugned final order is required to be recalled and reheard. Hence, the impugned final order is recalled and the Registry is directed to relist the appeal for fresh hearing in due course.

(pronounced in the open court on **09.09.2019**)

Sd/-

(P. VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

Sd/-

(P. DINESHA)
MEMBER (JUDICIAL)

ksr
20-08-2019