CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD
Division Bench
Court - I

Appeal No. ST/401/2009

(Arising out of Order-in-Revision No.01/2009(PVR) dated 06.02.2009 passed by CCCE (Appeals-II) Visakhapatnam)

MCS Industries Pvt Ltd ….. Appellant(s)

Vs.

CCCE & ST, Visakhapatnam - II ….. Respondent(s)

Appearance
Shri G. Sudhakar, Advocate for the Appellant.
Shri Bhanu Kiran, Asst. Commissioner/AR for the Respondent.

Coram:
Hon'ble Mr. M.V. RAVINDRAN, MEMBER (JUDICIAL)
Hon'ble Mr. P.V. SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: 28.08.2018
Date of Decision: 28.08.2018

FINAL ORDER No. A/31099/2018

[Order per: M.V. Ravindran]

1. This appeal is filed against Order-in-Revision No.01/2009 (PVR), dated 06.02.2009.

2. Heard both sides and perused the records.

3. On perusal of records it transpires that the adjudicating authority by Order-in-Original dated 31.12.2007 confirmed demand of service tax with interest thereof and also imposed penalties on the appellant herein on the amount that activities undertaken by the appellant would fall under the category of "Storage and warehousing services". Appellant herein preferred an appeal against the said order before the first appellate authority in Appeal

No.14/2008 (V-II) ST. The said appeal was taken up for disposal by the first appellate authority and by Order-in-Appeal No.34/2008 (V-II) ST, dated 30.12.2008, modified the Order-in-Original by upholding part of the contentions raised by the appellant. During the interregnum period, office of the Commissioner of Central Excise, Visakhapatnam-II Commissionerate, issued a show cause notice to appellant for revision of Order-in-Original dated 31.12.2007 as per the provisions of Sec.84 of the Finance Act, 1994. The Revision authority passed the Order-in-Revision on 06.02.2009 holding that adjudication order needs modification in the form of imposition of penalties of higher amount under Sec.76, 77.

4. Learned counsel was correct in bringing to our notice that the said Order-in-Revision could not have been passed under provisions of Sec.84 of the Finance Act, 1994. He brings to our notice the provision of Sec.84(4) of the Finance Act, 1994 and submits that this view has been taken by the Hon'ble High Court of Rajasthan in the case of Inani Carriers [2009 (13) STR 230].

5. Learned departmental representative reiterates the findings in the Order-in-Revision.

6. We find that the Order-in-Revision passed by the Revisioning authority lacks jurisdiction. It is a fact that when the matter was taken up for disposal by the Revisioning authority, the Order-in-Original got merged with the order of first appellate authority. In our view the doctrine of merger applies and provision of Sec.84(4) would come into play and the Revisioning authority had no power to pass any order under the said section. In our view, learned counsel was correct in contending that Hon'ble High Court of Rajasthan's

decision in the case of Inani Carriers would apply in full force in the case in hand. Accordingly, we find that the Order-in-Revision is unsustainable and liable to be set aside and we do so.

7. The impugned Order-in-Revision is set aside and the appeal is allowed.

(Operative part of this Order was pronounced in the Open Court
on conclusion of hearing)

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

(M.V. RAVINDRAN)
MEMBER (JUDICIAL)

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