CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD

REGIONAL BENCH - COURT - I

Service Tax Appeal No. 1485 of 2011

(arising out of order-in-revision No 01/2011(R) Adjn. ST (Commr) dated 11.03.2011 passed by Commissioner of Central Excise Hyderabad-II)

M/s Flytech Media Pvt Ltd — **Appellant**

3rd and 4th Floor, Nagam Towers,
Minister Road,
Secunderabad

Versus

The Commissioner of Central Excise, Customs & Service Tax, — **Respondent**

Hyderabad-II
L.B. Stadium Road,
Basheerbagh,
Hyderabad

Appearance:

Ms Radha Arun, Adv for the Appellant

Mr. C. Mallikarjuna Reddy A.R. for the Respondent.

CORAM

HON'BLE Mr Ashok Jindal, Member(Judicial)
HON'BLE Mr. P. Venkata Subba Rao, Member (Technical)

INTERIM ORDER No. 3/ 2020

Date of Hearing: 12/02/2020
Date of Decision: 10/06/2020

[ORDER PER:P.V. SUBBA RAO]

This appeal is filed against order-in-revision No.01/2011(R)-Adjn ST(Commr) dated 11.03.2011 Heard both sides and perused the records.

2. Sections 84 & 86 of the Finance Act,1994 were amended with effect from 19.08.2009. Prior to this amendment as per Section 84 the Commissioner of Central Excise had the power to revise any order passed by an officer subordinate to him and pass an order-in-revision. An appeal against such orders-in-revision lay with the CESTAT under Section 86. To align these provisions with corresponding central excise provisions, both Sections 84 & 86 of the Finance Act were revised with effect from 19.08.2009. The power of the Commissioner of Central Excise to issue orders-in-revision has been replaced by a provision enabling the department to file an appeal with the Commissioner of Central Excise (Appeals). Corresponding changes have also been made to Section 86 providing for appeals to the Tribunal against orders-in-appeal passed by the Commissioner of Central Excise (Appeals).

3. When Section 84 was amended, an explanation was inserted therein to the effect that if any order was passed by the adjudicating officer subordinate to Commissioner of Central Excise before commencement of these (revised) provisions, they shall continue to be dealt with by the Commissioner of Central Excise as if this section had not been substituted. Thus, it was a saving clause which allowed the Commissioner to pass orders-in-revision even after 19.08.2009 if the original adjudication order was passed prior to the amendment. However, corresponding saving clause was not inserted in Section 86. Therefore, the question which arises is whether the CESTAT can entertain appeals in respect of orders passed after 19.08.2009 under the erstwhile Section 84 by orders-in-revision. The relevant provisions before amendment and after amendment were as follows:

Section 84 as it stood <u>prior to amendment</u>:

Revision of orders by the Commissioner of Central Excise.
84. (1) The Commissioner of Central Excise may call for the record of a proceeding under this Chapter in which an adjudicating authority subordinate to him has passed any decision or order and may make such inquiry or cause such inquiry to be made and, subject to the provisions of this Chapter, pass such order thereon as he thinks fit.
(2) No order which is prejudicial to the assessee shall be passed under this section unless the assessee has been given an opportunity of being heard.
(3) The Commissioner of Central Excise shall communicate the order passed by him under sub-section (1) to the assessee, such adjudicating authority and the Board.
(4) No order under this section shall be passed by the Commissioner of Central Excise in respect of any issue if an appeal against such issue is pending before the Commissioner of Central Excise (Appeals).
(5) No order under this section shall be passed after the expiry of two years from the date on which the order sought to be revised has been passed.

Section 84 as it stood <u>after amendment</u>:

Appeals to Commissioner of Central Excise (Appeals)
84. (1) The Commissioner of Central Excise may, of his own motion, call for and examine the record of any proceedings in which an adjudicating authority subordinate to him has passed any decision or order under this Chapter for the purpose of satisfying himself as to the legality or propriety of any such decision or order and may, by order, direct such authority or any Central Excise Officer subordinate to him to apply to the Commissioner of Central Excise (Appeals) for the determination of such points arising out of the decision or order as may be specified by the Commissioner of Central Excise in his order.
(2) Every order under sub-section (1) shall be made within a period of three months from the date of communication of the decision or order of the adjudicating authority.
(3) Where in pursuance of an order under sub-section (1), the adjudicating authority or any other officer authorised in this behalf makes an application to the Commissioner of Central Excise (Appeals) within a period of one month from the date of communication of the order under sub-section (1) to the adjudicating authority, such application shall be heard by the Commissioner of Central Excise (Appeals), as if such application were an appeal made against the decision or order of the adjudicating authority and the provisions of this Chapter regarding appeals shall apply to such application.
Explanation.-For the removal of doubts, it is hereby declared that any order passed by an adjudicating officer subordinate to

the Commissioner of Central Excise immediately before the commencement of clause (C) of section 113 of the Finance (No. 2) Act, 2009, shall continue to be dealt with by the Commissioner of Central Excise as if this section had not been substituted.

Section 86 as it stood prior to amendment

Appeals to Appellate Tribunal.

86. (1) Any assessee aggrieved by an order passed by a Commissioner of Central Excise under section 73 or section 83A or section 84, or an order passed by a Commissioner of Central Excise (Appeals) under section 85, may appeal to the Appellate Tribunal.

Section 86 as it stood immediately after amendment

Appeals to Appellate Tribunal.

86. (1) Any assessee aggrieved by an order passed by a Commissioner of Central Excise under section 73 or section 83A, or an order passed by a Commissioner of Central Excise (Appeals) under section 85, may appeal to the Appellate Tribunal.

4. In this case, the relevant dates were as follows:

4.12.2008 Show cause notice

13.03.2009 JC's order-in-original

19.08.2009 Amendment to Sections 84 & 86

04.02.2010 Revision notice from Commissioner

16.04.2010 Reply to revision notice

11.03.2011 Order-in-revision (impugned order)

According to the learned counsel for the appellant, they are entitled to appeal before this Bench against the order-in-revision as per the order of the Bangalore Bench of CESTAT in the case of T.A. Pai Management Institute [2013(29)STR 577 (Tri-Bang)]. Relying on the provisions of General Clauses Act, it has been held that in terms of Section 6 clauses c & e of the General Clauses Act, the rights and privileges accrued under the repealed enactment will not be lost by the repeal of the Act itself. Therefore, the appellant has a right to appeal to the CESTAT even though there is no explicit savings clause in Section 86 of the Finance Act 1994.

5. *Per contra* learned A.R. relies on the order of the Mumbai Bench of CESTAT in the case of Commissioner of Service Tax Mumbai I Vs Zee Entertainment Enterprises Ltd [2017(47)STR 297(Tri-Mum)] in which the Tribunal has held that the Committee of Chief commissioners have no power to review an order-in-revision after amendment to Section 86 of the Finance Act 1994 and therefore dismissed the Revenue's appeal as non-maintainable. Learned A.R. states that the ratio of this judgement should apply in the present case.

6. We have considered the arguments from both sides. We find that the orders of the Bangalore Bench of the Tribunal in the case of T.A. Pai Management Institute (supra) and Tribunal Mumbai in the case of Zee Entertainment Enterprises Ltd (supra) are contrary to each other. Both cases involve the question as to whether the Tribunal has a right to entertain appeals against orders-in-revision after 19.08.2009 in the absence of any explicit provisions by way of saving clause in section 86 of the Finance Act 1994. The only difference we find is that in the case of T.A. Pai (supra) it was the assessee who wanted to appeal before Tribunal Bangalore and the appeal was allowed as maintainable and in the case of Zee Entertainment Enterprises (supra) the Revenue wanted to appeal before the Tribunal Mumbai which has been held as not maintainable. We are of the opinion that the same yardstick should be applied regardless of which party appeals and in view of the conflicting decisions between the Tribunal Bangalore and the Tribunal Mumbai, we find that this is a fit case to be referred to larger bench for a decision on the maintainability of appeals filed under Section 86

after 19.08.2009 by both the Revenue and the assessee against orders-in-revision passed by the Commissioners.

7. In view of the above, Registry is directed to present the file before the Hon'ble President for constitution of a larger bench to decide the following question:

"Are appeals by the Revenue and assessee against orders-in-revision passed after 19.08.2009 maintainable before the CESTAT in the absence of any specific saving clause in Section 86 of the Finance Act 1994? "

(Order pronounced in open court on 10/06/2020)

(Ashok Jindal)
Member (Judicial)

(P. Venkata Subba Rao)
Member (Technical)

Neela reddy