CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH - COURT NO. 02

Service Tax Appeal No. 88447 of 2018

(Arising out of Order-in-Appeal No.PK/ST-I/MUM/199/16-17 dated 24.03.2017 passed by Commissioner (Appeals)-I Service Tax, Mumbai Zone)

M/s. Hamlet Construction (India) Pvt. Ltd. **.....Appellant**
111-A, Mahatma Gandhi Road, Fort,
Mumbai – 400 023.

VERSUS

Commissioner CGST, Mumbai South **.....Respondent**
13th Floor, Air India Bldg.,
Mumbai – 400 021.

Appearance:

Shri Mahesh Raichandani, Advocate for the Appellant
Shri Dharmendra Singh, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

FINAL ORDER NO. A/85827/2020

Date of Hearing: 19/10/2020
Date of Decision: 19/10/2020

PER : S.K. MOHANTY

This appeal is directed against the impugned order dated 24.03.2017 passed by the Ld. Commissioner (Appeals)-I, Service Tax Mumbai.

2. Brief facts of the case are that the appellant is engaged in providing taxable service under the category of "Renting of Immovable Property", defined under Section 65 of the Finance Act, 1994. During the disputed period, the appellant had filed the refund application, claiming refund of an amount of Rs.10,95,425/- on the ground that one of its licensee is a member of Retailer's Association of India and was granted interim relief for payment of service tax in the Writ Petition No. 2238 of 2010 filed before the Hon'ble Bombay High Court. The contention of the appellant was that since it had paid the service tax into Government Exchequer, the refund benefit provided under Section 11B of the Central Excise Act, 1944, made applicable to the service tax matter under Section 83 of the Finance Act, 1994 should be available to it. The refund application filed by the appellant was rejected vide order dated 29.10.2012, mainly on the ground that the appellant did not submit the documents in support of the refund application and that no proof of payments made by the tenants was submitted along with such application. On appeal, the Ld. Commissioner (Appeals) vide the impugned order dated 24.03.2017 has rejected the appeal filed by the appellant on the ground that the issue of constitutional validity of levy of service tax is sub-judice before the Hon'ble Apex Court and thus, the refund claim filed by the appellant cannot be decided at that juncture.

3. Heard both sides and perused the records.

4. The legislative competence of the Union Parliament for levy of service tax under Section 65(105)(zzzz) of the Finance Act, 1994, on renting of immovable property or any other service in relation to such renting, for use in the course of or, for furtherance, of business or commerce was questioned by various petitioners, including Home Solution Retail India Ltd. before the Hon'ble Supreme Court. The tenant of the appellant did not pay service tax to the appellant on such ground. We find that by placing reliance on the reference made to nine Judges Bench in the case of *Mineral Area Development Authority & ors. Vs. Steel Authority of India & ors.* (2011) 4 SCC 450,

the Hon'ble Supreme Court in the case of Union of India & ors vs. UTV News Ltd., vide judgment dated 05.04.2018, reported in 2018-TIOL-124-SC-ST,were pleased to defer the matter till disposal of the issues pending before such Constitutional Bench. Since the constitutional validity of the issue of levy of service tax on the disputed service is sub-judice before the Hon'ble Apex Court, we are of the considered view that the present appeal filed by the appellant cannot be taken up for a decision on merits at this juncture and the matter should be remanded to the original authority for deciding the issue of leviability of service tax on the disputed taxable service along with other issues, after disposal of the Special Leave Petitions (SLPs)pending before the Constitutional Bench of Hon'ble Supreme Court in the case of *Mineral Area Development Authority & ors. (supra).*

5. In view of above, after setting aside the impugned order, the matter is remanded to the original authority for re-adjudication of the matter, on the basis of the subject issue to be decided by the Hon'ble Supreme Court (supra).

(Dictated and pronounced in the open court)

(S. K. Mohanty)
Member (Judicial)

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