CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Service Tax Misc. (EH) Application No. 85261 of 2021
(on behalf of Respondent)

In

Service Tax Appeal No. 89647 of 2018

(Arising out of Order-in-Appeal No. IM/CGST/A-I/MUM/148/2018-19 dated 30.06.2018 passed by the Commissioner of Central Tax (Appeals-I), Mumbai)

Commissioner of CGST, Navi Mumbai .... Appellant
16th Floor, Satra Plaza, Sector – 19D,
Palm Beach Road, Vashi, Navi Mumbai - 400705

Versus

M/s Intertek India Pvt. Ltd. .... Respondent
Akurli Corporate Park, G3, Ground Floor,
LBS Marg, Kanjurmarg (W), Mumbai - 400079

Appearance:

Shri Nitin Ranjan, DC, Authorized Representative for the Appellant

Shri Ankit Sachdeva, Advocate for the Respondent

CORAM:

HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. C.J. MATHEW, MEMBER (TECHNICAL)

FINAL ORDER NO. A/87100 / 2021

Date of Hearing: 01.11.2021
Date of Decision: 09.11.2021

Per: Ramesh Nair

This early hearing application was filed by the respondent on the ground that the appeal is not maintainable on the monetary limits in terms of Circular No. 390/MISC/116/2017-JC dated 22.08.2019 according to which the Department is not supposed to file appeal in case amount involved is less than Rs.50 lakhs.

2. Considering the ground for early hearing as submitted by the learned Counsel Shri Ankit Sachdeva for the respondent, the early hearing application is allowed.

3. Since the issue is limited to maintainability of the Revenue's appeal, appeal itself is taken up for disposal.

4. Shri Ankit Sachdeva, learned Counsel for the respondent submits that since the amount involved is less than Rs.50 lakhs and the issue does not fall under the exclusion category as per the Government's policy on monetary limits, the appeal is liable to be dismissed on this ground itself.

5. On the other hand, Shri Nitin Ranjan, learned DC (AR) appearing for the Revenue strongly object for disposal of the appeal on monetary limits. As per the earlier order of this Tribunal, the learned AR has produced a letter issued by the Dy. Commissioner, Navi Mumbai Commissionerate wherein it was stated that since the issue involved is of substantial question of law, the same cannot be disposed of on monetary limits in terms of Circular dated 22.08.2019 read with the Instructions F. No. 390/MISC/163/2010-JC DATED 17.8.2011.

6. We have carefully considered the submissions made by both the sides and perused the records.

7. We find that the only issue is to be decided whether Revenue's appeal be decided on merit or monetary limits in the light of Circular No. 390/MISC/116/2017-JC dated 22.08.2019. On careful reading of the said Circular, we find that at para 4 of the said Circular it is stated that issues involving substantial questions of law as described in para 1.3 of the instruction dated 17.8.2011 would be contested irrespective of the prescribed monetary limits. The said para 1.3 of the Instructions dated 17.8.2011 is reproduced below: -

> *"1.3 Adverse judgments relating to the following should be contested irrespective of the amount involved.*
>
> *a) Where the constitutional validity of the provisions of an Act or Rule is under challenge.*
>
> *b) Where Notification/Instruction/Order or Circular has been held illegal or ultra vires."*

In the above para 1.3 only those cases where the question of law involved is of constitutional validity of law and/or where notification/instruction/order or circular has been held ultra vires.

8. In the present case, the issue is whether the appellant is liable to pay Service Tax on testing charges received by it in respect of the services rendered in India to its foreign client. As per the said issue involved, it does not fall under any of the two categories, which are specified in para 1.3 of Circular dated 17.8.2011. Therefore, merely if any substantial question of law involved, the Revenue is not allowed to file appeal before this Tribunal. Since the amount involved is less than

Rs.50 lakhs, therefore, as per the clear positions from both the above Circulars, we are of the view that no substantial question of law related to constitutional validity of law and/or *ultra vires* of notification/instruction/circular/order etc. involved in the present case. Therefore, the present case does not fall under the exclusion category as prescribed in para 1.3 of the Circular dated 17.8.2011.

9. Accordingly, as per the issue involved in the present case, the Revenue is not supposed to file appeal before this Tribunal being amount involved is less than Rs.50 lakhs. Therefore, the appeal filed by the Revenue is dismissed on monetary limits vide Circular dated 22.08.2019.

(Pronounced in Court on 09.11.2021)

(C.J. Mathew)
Member (Technical)

(Ramesh Nair)
Member (Judicial)

Sinha