CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH - COURT NO. I

Service Tax Miscellaneous Application No. 85618 of 2023

In

Service Tax Appeal No. 85344 of 2016

(Arising out of Order-in-Appeal No. PUN/SVTAX/000/APP/167/15-16 dated 27.11.2015 passed by Commissioner of Service Tax (Appeals).)

Tech Mahindra Ltd. **.... Appellant**
Sharda Centre, Off Karve Road,
Erandwane,
Pune-411 004.

Versus

Commissioner of Service Tax-I, Pune **.... Respondent**
I C E House, 41/A,
Sasson Road,
Pune-411 001.

APPEARANCE:

Shri Vinay Jain, Advocate a/w Ms. Shambhavi, Chartered Accountant for the Appellants

Shri S.B.P Sinha, Auth. Representative for the Respondent

CORAM:

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

FINAL ORDER NO. A/ 87624/2024

Date of Hearing: 25.10.2024

Date of Decision: 25.10.2024

Per: S.K. MOHANTY

The applicants/appellants have filed the miscellaneous application, praying for consideration of the additional grounds in the appeal filed by them. Prayer made by the applicants/appellants are considered and accordingly, the additional grounds urged now are taken into record. Miscellaneous application stands disposed of.

2. Briefly stated, the facts of the case are that the appellants are engaged in the business of providing software development services to their clients located in India as well as abroad. Such services are classified as taxable service, under the category of 'Information Technology Software Service' (ITSS), defined under Section 65(105) (zzzze) of the Finance Act, 1994. For provision of such taxable service, the appellants got themselves centralized registered with the jurisdictional service tax authorities. In the present case, the appellants had entered into the agreement dated 03.01.2005 with their overseas subsidiary M/s. MBT International Inc., USA (M/s. MBT), for rendering of onsite software development services. An audit enquiry was initiated by the department against the appellants in the year 2010 for the period from April 2005 to March 2010, wherein it was observed that the appellants had not paid service tax under reverse charge mechanism, on the remittances made by them to M/s. MBT in respect of the marketing support services. On the basis of the audit report, the appellants had paid service tax amounting to Rs.3,93,19,650/- under protest. Thereafter, Show Cause Notice (SCN) dated 08.04.2011 was issued to the appellants, which was adjudicated vide the original order dated 11.07.2012, in confirming the proposed demand on the appellants. The said original order was appealed against by the appellants before the Tribunal. Vide Final Order No. A/77/15/STB dated 08.01.2015, the Tribunal had set aside the service tax demand amounting to Rs.1,23,23,329/- for the period prior to 18.04.2006 and confirmed the balance demand of Rs. 2,69,96,321/- for the period post 18.04.2006. Pursuant to the order dated 08.01.2015 of the Tribunal, the appellants had filed the application dated 15.03.2015 before the jurisdictional Dy. Commissioner of Service Tax, claiming refund of Rs.1,23,23,329/-. The said refund application was disposed of by the original authority vide order dated 15.05.2015, in sanctioning the refund claim amount, but adjusting the said amount towards pending outstanding interest liability on demand confirmed by the Tribunal for the period post 18.04.2006. On appeal against the said adjudication order dated 15.05.2015, the learned Commissioner (Appeals) vide the impugned order dated 27.11.2015 has upheld the original order, wherein the refund amount was adjusted towards the outstanding interest liability. Feeling aggrieved with the

impugned order dated 27.11.2015, the appellants have preferred this appeal before the Tribunal.

3. Heard both sides and perused the case records.

4. The appellants have stated that for adjusting the refund amount towards pending interest liability, the original authority had neither issued any SCN nor the personal hearing was granted to them; thus, the principles of natural justice have been violated by the original authority. The appellants have further submitted that their case with regard to payment of the service tax liability amounting to Rs.2,69,96,321/- had been settled under the Sabka Vishwas (Legacy Dispute Resolution) Scheme Rules, 2009 (SVLDRS) and as such, the appellants shall not be liable for payment of any interest. The appellants have also raised various other issues and relied upon the judgments, in support of their stand that no interest liability can be fastened on them in terms of the SVLDRS.

5. However, on reading of the orders passed by both the lower authorities, we find that the issue of settlement of dispute under the SVLDRS was not the subject matter of discussions therein. Further, the issue with regard to filing of appeal against the order of the Tribunal before the Hon'ble Bombay High Court was also not discussed by the lower authorities. On the contrary, the appellants in the present appeal have raised various issues through the miscellaneous application, which were also not been discussed or considered in the respective orders passed by the authorities below, owing to the reason that such aspects were not raised by the appellants before them and that the issues were raised for the first time before the Tribunal. Therefore, we are of the considered view that the matter should be remanded back to the original authority for consideration of all the points involved in the present appeal, for passing of proper/appropriate adjudication order.

6. In view of the above, the impugned order is set aside and the appeal is allowed by way of remand to the original authority for *de novo* adjudication of the matter. It is made clear that this is an open

remand and the original authority should consider all the submissions made/to be made by the appellants. Needless to say that reasonable opportunity of personal hearing should be granted to the appellants before adjudication of the matter afresh.

7. In the result, the appeal is allowed by way of remand.

(Operative portion of the order pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

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