Le Duplex and Another Vs. Commissioner of Central Excise (Service Tax), Puducherry

Le Duplex and Another Vs. Commissioner of Central Excise (Service Tax), Puducherry

SooperKanoon Citation : sooperkanoon.com/1149741

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Chennai

Decided On : Mar-04-2014

Judge : The Honourable Mr. P.K. Das, Judicial Member

Appeal No. : ST/S/40342 & 40343 of 2014 & ST/40200 & 40201 of 2014 [Arising Out of Order-in-Appeal Nos.05 & 06/2013 (P)(D), dated 28.10.2013 passed by the Commissioner of Central Excise (Appeals), Chennai]

Appellant : Le Duplex and Another

Respondent : Commissioner of Central Excise (Service Tax), Puducherry

Judgement :

1. After hearing both the matters at length, I find that the appeal may be decided at the stage of stay petitions hearing itself. Accordingly, after disposing the stay applications both the appeals are taken up for hearing for disposal.

2. The learned Counsel for the appellants submits that the adjudicating authority dropped the show-cause notices against both the appellants. Revenue filed appeals before Commissioner (Appeals). The learned Counsel drew the attention of the Bench to the relevant portion of the Revenue appeal insofar as the prayer of the Revenue is to set aside the Orders-in-Original and to pass necessary order as it deem fit in the facts and circumstances of the case. She further drew the

attention of the Bench to the operative portion of the impugned order, whereby, the Commissioner (Appeals) ordered that the appeal filed by the Appellant-Department is not completely devoid of merits. The impugned Order-in-Original passed by the lower adjudicating authority lacks merit and is accordingly set aside and the Department appeal is allowed. It is contended that the Commissioner (Appeals) set aside the adjudication order, but, no duty was determined and, therefore, only the show-cause notice would survive. It is submitted that there is no confirmation of demand and the impugned order cannot be sustained on this ground alone.

3. On the other hand, the learned Authorised Representative on behalf of the Revenue submits that the Commissioner (Appeals)rightly set aside the adjudication order and, therefore, the demand of tax as proposed in the show-cause notice is automatically confirmed. He further submits that the Commissioner (Appeals) had given a detailed findings to the extent that the appellant was bound to pay an amount of 8% on the value of exempted service. He further submits that the appellant had not contested the demand on merits and, therefore, such order cannot be set aside merely on hyper-technical ground.

4. After considering the submissions of both sides, I find force in the submission of learned Counsel for the appellant. Show-cause notices were issued proposing to recover an amount under Rule 6(3A)/14 of Cenvat Credit Rules, 2004 read with the proviso to Section 73(1) of the Finance Act, 1994 along with interest and imposition of penalty. Section 73 of Finance Act, 1994 provides that Central Excise Officer shall serve notice on such person for recovery of such amount. The Central Excise Officer shall be empowered to determine the amount considering the representation of the person and on such determination such persons shall pay the amount as determined. In the present case, the Commissioner (Appeals) set aside the order and had not determined the demand of tax as proposed in the show-cause notice and, therefore, such order cannot be sustained. Accordingly, I set aside the impugned order and the matter is remanded to the Commissioner (Appeals) to decide the matter afresh after giving a reasonable opportunity of hearing to the appellants. Both the appeals are allowed by way of remand and stay applications are disposed of.