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Cce, Indore Vs. M/S. Gupta and Company (Gopal Studio)

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Principal Bench New Delhi

Decided On : Jan-02-2014

Judge : The Honourable Ms. Archana Wadhwa, Member (Judicial) &Amp; the Honourable Mr. Rakesh Kumar, Member (Technical)

Appeal No. : Service Tax Appeal No. 100 of 2009 [Arising Out of the Order-in-Appeal No. IND-I/186 of 2008 dated 20/11 of 2008 passed by The Commissioner (Appeals-I), Customs & Central Excise, Indore.]

Appellant : Cce, Indore

Respondent : M/S. Gupta and Company (Gopal Studio)

Judgement :

Archana Wadhwa, J.

1. Being aggrieved with the order passed by the Commissioner (Appeals), Revenue has filed the present appeal. Though the respondent have made a request for adjournment, but as we find the issue was covered by the decision of the Larger Bench of the Tribunal in the case of Agarwal Colour Advance Photo System vs. CCE, Bhopal reported in 2011 (23) S.T.R. 608 (Tri. - LB), we proceed to decide the appeal itself.

2. After hearing the learned Departmental Representative and after going through the impugned order, we find that the issue required to be decided is as to whether

the value of the inputs used in providing photography services are required to be included in the value of the services or the same is required to be excluded. Larger Bench of the Tribunal in the case of Aggarwal Colour Advance Photo System vs. CCE, Bhopal (supra) has held that the value of the materials used in providing the services would form part and parcel of the total assessable value. As such, we find that the issue on merits stand decided against the respondent.

3. That brings us to the issue of limitation. We find that the Commissioner in his impugned order has decided 3 show cause notices issued as under :-

Show cause Notice No.	Date	Period involved
C. No. V(ST)3-536/CIII/03-04/ 1415-16	24/04/03	10/2001to 09/2001
C. No. RST/IND/PS/94/2001-02/2475-76	19/04/04	10/2002to 09/2003
1C. No. RST/IND/PS/94/01-02/ 1201	01/04/05	10/2003 to 09/2004

As its clear from above, the first show cause notices would be partly barred. Admittedly prior to the declaration of law by the Larger Bench in the case of Aggarwal Colour Advance Photo System vs. CCE, Bhopal (supra), there were divergent views of the Tribunal as also of various other Courts. The Honble Supreme Court in the case of Continental Foundation Jt. Venture vs. CCE, Chandigarh I reported in 2007 (216) E.L.T. 177 (S.C.) has held that where there are diverse views of Courts and in the light of various different Circulars operating at different points of time, the larger period cannot be invoked against an assessee. Its stand held that due to diverse views of various High Courts, there could be a bonafide belief on the part of the assessee and no suppression can be attributed to them.

4. We find that the Tribunal in number of identical matters has held that in view of the fact that the earlier decisions of the Tribunal were in favour of the assessees, no suppression can be attributed to the assessees.

5. In view of the above, we set aside the impugned order of Commissioner (Appeals) and remand the matter to original Adjudicating Authority for confirmation of demands falling within the limitation period. As regards penalty, we are of the view that since the issue was the subject matter of the Larger Bench and the earlier decisions were in favour of the assessee, no penalty can be imposed upon the respondent in terms of Section 80 of the Finance Act, 1994.

6. In view of the above, matter is being remitted back to the original Adjudicating Authority for calculation and confirmation of demand falling within the normal period of limitation. Revenues appeal is disposed of, in above terms.

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