Eicher Consultancy Services Ltd. Vs. Cce

Eicher Consultancy Services Ltd. Vs. Cce

SooperKanoon Citation : sooperkanoon.com/31085

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jun-02-2003

Reported in : (2003)(157)ELT432Tri(Mum.)bai

Judge : K Kumar

Appellant : Eicher Consultancy Services Ltd.

Respondent : Cce

Judgement :

1. Sri. F.D. Souza, Ld. Representative appearing on behalf of the appellants had submitted that the amount of Rs. 16,322/- has been demanded on account of late payment. His contention is that though the cheques were presented before the due dates for the quarter in question, however, the same were encashed a day or two later and consequently the imposition of interest. The Ld. Consultant brought to my notice the instructions issued as per the Directorate of Service Tax Board F.No. V/DGST/33-Misc/46/2000 dated 23.8.2002 as under:- " It is observed that the identical issue has arisen in case of payment of Inland Air Travel Tax (IATT) by Sahara Airlines Ltd. The concerned authorities had imposed penalty and ordered recovery of the interest from the party since the cheques deposited by them towards payment of IATT were credited to the Government after the due date. The matter has now been decided in second appeal by the Government of India (Sahara Airlines Ltd. Vs. Commissioner of Custom (Appeals) - 2000 (117) ELT 802 (G.O.I)-2000(110) TAXMAN 378 (G.O.I)- 2000(110) TAXMAN 378 (G.O.I). The Government has held that a harmonious reading of the provisions of Rule 7 of

the Central Government Account (Receipts & Payments) Rules and Rules 79 & 80 of the Treasury Rules makes it clear that the Government dues can be presented in the form of cheques into the authorized bank. And if the cheque is not dishonored later, the payment shall be deemed to have been made on the date when the cheques was handed over the Government bankers. Accordingly, the Government set aside the imposition of penalty, interest etc. in the said case.

The ratio of above cited decision of the Government would apply mutatis mutandis to the payment of service tax also. Therefore, it is clarified that in the case where the service tax amount has been deposited by an assessee in the authorised bank, by cheques before the due date and such cheques is not dishonoured later, the Department need not initiate proceedings for recovery of interest/ penalty etc. However, if the cheques is not honoured in due course or the clearance is abnormally delayed for any lapse on the part of the assessee, the department would be free to take penal action etc.

as deemed fit." 2. Sri Hemant Kotikar, Ld. SDR appearing on behalf of the Revenue has brought to my notice the amended provisions of Rule 2A of the Service Tax Rules. It clearly provides that if the assessee deposits the service tax by cheques, the date of presentation of cheques to the bank designated by the Central Board of Excise and Customs for this purpose shall be deemed to be the date on which service tax has been paid subject to realization of that cheques. In this case it is undisputed that the cheques have been realized a day or to later. He , therefore clearly concedes that the appellants have got some merits and he has no objection for allowing the appeal filed by the appellants.

3. In view of the above said position, I allow the appeal filed by the appellants.