Cce Vs. Silver Spring Spinners India (P)

Cce Vs. Silver Spring Spinners India (P)

SooperKanoon Citation : sooperkanoon.com/38367

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Mar-07-2005

Judge : J T T.K.

Appellant : Cce

Respondent : Silver Spring Spinners India (P)

Judgement :

1. Revenue has filed this appeal against Order-in-Appeal No. 134/2004 dated 12.8.2004 passed by the Commissioner of Central Excise (Appeals), Tirunelveli. In the impugned order, the Commissioner (Appeals) relying on the decision of the Hon'ble Tribunal in the case of L.H. Sugar Factories Ltd. and Ors. v. CCE, Meerut 2004 (165) E.L.T. 142 (Tri-Del.) allowed the appeal of the respondent against the original authorities demand of service tax amounting to Rs. 76,795/- in respect of the service tax on Goods Transport Operators.Lahu Udyog Bharati v. Union of India struck down the modifications of service tax rule, which shifted the levy of service tax from the service provider to service receiver in respect of the Goods Transport Operators and held that the levy of service tax on the receiver of the service was illegal and unsustainable in law. To overcome the implication and to rectify the defects pointed out by the Supreme Court in the above said case, the Government vide Sections 65, 66 & 67 of the Finance Act, 1994 so as to validate the Rule 2(1)(d)(xvii) of Service Tax Rules, 1994. A new Section 71A for filing of returns by them for assessment within six months from the date of enactment of Finance Act, 2003 was passed. The Tribunal in the case of L.H. Sugar Factories

Ltd. and Ors. v. CCE, Meerut has held that even though the receivers of the service of Goods Transport Operators are deemed to be liable to pay tax under Section 68 of the Finance Act, 1994 (as amended) as the liability to file returns is cast on them only under Section 71A and not under Section 70 they are not covered under Section 73. Liability under Section 73 covers cases of assessees, who are liable to file return under Section 70.

Accordingly, the persons, who are liable to file return under Section 71A are not liable to pay tax. In view of the above position, the Commissioner (Appeals) set aside the demand order of the original authority. The ld. SDR pointed out that Revenue has gone in appeal against the Tribunal's decision in L.H. Sugar Factories case. Since the Tribunal's order has not been stayed and the same decision has been followed in other cases, I am bound to respectfully follow the same.

The list of cases wherein L.H. Sugar Factories case has been followed are given below:L.H. Sugar Factories Ltd. and Ors. v. CCE, Meerut 2004 (61) R.L.T. 142 (CESTAT-Del.)Thiru Arooran Sugars Ltd. v. CCE, Trichy Vide F.O. No. 844 & 845/2004 dated 1.10.2004, dated 1.10.2004 : 2004 (117) ECR 679 (T)Jai Jagadhambiga Textile Mills Ltd. v. CCE, Tirunelveli Vide F.O. No.Sundaram Industries Ltd. v. CCE, Madurai Vide F.O. No. 241/2005 dated 22.2.2005.