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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Apr-13-2005

Judge : J Balasundaram, Vice-

Appellant : Bhogawati Ssk Ltd.

Respondent : Cce

Judgement :

1. After hearing both sides for some time on the application for waiver of pre-deposit of service tax of Rs. 8,64,372/-, I find that it is possible to decide the appeal itself today as the issue in dispute stands covered in favour of the assessee by the earlier decisions of the Tribunal; hence after waiving pre-deposit, the appeal itself is taken up for disposal.

2. The issue in dispute is whether the appellants herein who are registered Co-Op. Socy engaged in the manufacture of sugar and molasses are liable to service tax as they had availed the service of Goods Transport Operator. The period in dipsute is November 16th 1977 to June 1st 1998.

3. I have heard both sides and find that the issue is no longer res-integra as it has been settled by the Tribunal's decision in the case of L.H. Sugar Factories Ltd. v. CCE Meerut II holding that even though persons receiving taxable service of goods transport operators are deemed liable to pay tax under Section 69 of Finance Act, 1944, they are not liable to pay tax as the liabiltiy to file returns is cast on them only under Section 71A of Finance Act and not under Section 70 and they

are not covered under Section 73 of the Act. The said order has been followed in subsequent decisions including that int eh case of Raigad Sahakari Sakhar Karkhana Ltd. v. CCE Pune-I (Order No. A/591/WZB/2004). Following the ratio of the above orders, I set aside the demand of service tax in the present case and allow the appeal.

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