United Plastomers Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-20-2005

Judge : P Bajaj

Appellant : United Plastomers

Respondent : Cce

Judgement :

1. The above captioned appeals have been filed against the common order-in-appeal. Appeal No. 184 & 185 have been filed by the assessee for disputing the confirmation of service tax with penalty as detailed therein, while appeal No. ST-05 & 06 have been filed by the Revenue seeking enhancement of penalty.

2. I have heard both sides and gone through the record. Service tax has been demanded for the disputed period from the Appellants on two counts, firstly, as Consignment Agent, and secondly, as Dealer Agent under the category of Clearing and Forwarding Agent. So far as liability to pay service tax for the disputed period, as consignment agent is concerned, the learned Counsel has conceded that the Appellants are liable to pay service tax being consignment agent of IPCL. Therefore, the impugned Order confirming the service tax on that count against the Appellants is upheld.3. However the liability to pay service tax as dealer agent under the category of clearing and forwarding agent during the period under dispute has been contested by the Appellants. Their contention is legally justifiable, as their case stands squarely covered by the ratio of the decision in the case of Raja Rajeshwari Intl. Polymers (P) Ltd. v. CCE, Bangalore been ruled that

dealer agent falls within the purview of clearing and forwarding operation, as the goods are not directly or indirectly handled by him and no service tax is payable on the commission received by him on account of Del Credere Agency. Even learned Commissioner (Appeals) in the impugned Order has observed that these services of the Appellants are not liable to pay tax on the commission received by them. Therefore, confirmation of service tax on that count on the Appellant is not maintainable and the same is set aside. Keeping in view the facts and circumstances and the issue involved the penalty imposed on the Appellants under Section 76 of the service tax when the tax had been paid prior to the issuance of show cause notice, is set aside. The impugned Order accordingly, stands modified. The appeals filed by the assessee are disposed of in the above terms, while the appeal of the Revenue for enhancement of penalty, is dismissed.