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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT

Decided On : Jun-20-2005

Judge : S Peeran, J T T.K.

Appellant : Mcdowell and Co. Ltd.

Respondent : Cce

Judgement :

1. The appellants are challenging the correctness of the OIA No.113/2003 dated 25.8.2003. The appellants are manufacturers of Food Flavours and Essences, which are used in the manufacture of IMFL products. They had availed the services of 'Goods Transport Operators' and the Revenue has proceeded against them to confirm the demands of service tax in terms of Clause 65 of the Finance Act for the period 16.11.1997 to 1.6.1998 on the ground that they fall within the category of Goods Transport Operators.

2. The learned Sr. Counsel submitted that the appellants' services during the period cannot be brought between the ambit of Goods Transport Operators. It is contended that the Service Tax on services rendered by the Goods Transport Operators in relation to the carriage/transportation of goods was imposed in the Finance Act, 1977.

vide Section 65(17) w.e.f. 16.11.1997. The levy of service tax on the textile services rendered by the Goods Transport Operators was initially imposed on the "service provider" i.e. Goods Transport operators. However, the said levy was

transferred to the 'Users of the Service' by introduction of Sub-rule (xvii) to Rule 2(d)(1) of the Service Tax Rules, 1944 vide Notification No. 47/97 dated 5.11.1997. It is contended that subsequently, the levy of Service Tax on the services rendered by the Goods Transport Operators was withdrawn by Notification No. 49/98 dated 2.6.1998. In other words, the effective period for levy of service tax on Goods Transport Operators was from 16.11.1997 to 1.6.1998. It is contended that the provisions of the said Notification No. 42/97 dated 5.11.1997 (wherein the levy of Service Tax was transferred to the Users of the Services) has been set at naught by the Apex Court in the case of Laghu Udyog Bharati v. UOI by holding that the said provisions of Rule 2(d)(1)(xvii) are ultra vires to the Finance Act and the Apex Court further directed the department to refund the Service Tax collected from the assessees. The learned Sr. Counsel submits that the Tribunal, in the case of L.H.Sugar Factories Ltd. and Ors. v. CCE 2004 (61) ELT 142 (CESTAT-Del.) delivered the judgment in the light of the said Supreme Court ruling and held that the service tax for the period 16.11.1997 to 1.6.1998 by users of transport services will not cover such users availling services of goods transport operators for the aforesaid period and the demands are not sustainable. The learned Sr. Counsel pointed out that in the light of both these judgments, the demand of Sevice Tax for the period 16.11.1997 to 1.6.1998 on Users is not sustainable and the appeal is required to be allowed.

4. On a careful consideration and examination of the judgments, we find that the Apex Court has set aside the imposition of Service Tax on Goods Transport Operators. Likewise, the Tribunal, in the case of L.H.Sugar Factories Ltd. had clearly held that service tax not paid for the said period by users of transport services is not recoverable and not maintainable in terms of provisions of Section 73 of the Finance Act, 1994, as it stood on the date of issue of Show Cause Notices and also after its amendment (with retrospective effect) by Finance Act, 2003 will not cover such users availing services of Goods Transport Operators during the aforesaid period. The demands have been set aside as unsustainable. We are of the considered view that these judgments clearly apply to the facts of the case and the demands are not sustainable. The same are set aside by allowing the appeal with consequential relief, if any.

(Operative portion of this Order was pronounced in open court on conclusion of hearing)