

Commissioner of Central Excise Vs. Primo Pick N Pack

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-29-2005

Reported in : (2006)STR43

Judge : S Kang, Vice-

Appellant : Commissioner of Central Excise

Respondent : Primo Pick N Pack

Judgement :

2. The Revenue filed these appeals against the impugned order whereby the interest and penalty imposed on the respondent was set aside. In this case the respondents are liable for Service Tax as goods transport operators. The provisions regarding Service Tax in respect of the goods transport operators were set aside by the Hon'ble Supreme Court in the case of Laghu Udyog Bharati v. CCE reported in 1998 (112) E.L.T. 365.

Thereafter, the provisions regarding Service Tax were amended retrospectively to validate the collection of Service Tax from the service receiver for the period 16-11-1997 to 1-6-1998. As per the provisions of Rule 71A of Finance Act, 2003 the returns in respect of Service Tax are to be filed within six months from the date on which the Finance Bill 2003 receives the assent of the President.

3. The Commissioner (Appeals) in the impugned order held that the returns were filed by the respondents within the prescribed period and the Service Tax was also

paid.

4. The only contention of the Revenue is that as per the relevant provisions of Service Tax Rules the respondents are liable to pay interest as well as penalty.

5. The contention of the respondent is that even Service Tax is not leviable on the respondents in view of the decision of the Tribunal in the case of L.H. Sugar Factories Ltd. v. CCE . The contention is that the appellants are not challenging the demand of Service Tax, therefore they are barred from challenging the Service Tax. However, they are at liberty to challenge the imposition of penalty and interest by saying that even the Service Tax is not leviable. Therefore, the contention of the respondent is that no penalty or interest can be imposed on respondents.

6. In this case the imposition of Service Tax in respect of service goods transport operators was set aside by the Hon'ble Supreme Court and subsequently the amendment was made retrospectively to validate the collection of Service Tax from the Service receivers and as per amendment the respondents filed returns within due date. In these circumstances, I find no infirmity in the impugned order whereby penalty and interest is set aside. The appeals are dismissed.

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