

**Central Office, Mewar Palace Vs. Cce**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Aug-02-2005

**Judge :** S Kang, Vice

**Appellant :** Central Office, Mewar Palace

**Respondent :** Cce

**Judgement :**

2. The appellants filed this appeal against the order in appeal whereby the refund claim in respect of the Service Tax paid by the appellants was rejected.

3. The contention of the appellants is that they are registered with the Service Tax Authority for the following services: The contention is that apart from these services, appellants are also undertaking the Maintenance services, Garage supervision services, Utility services, Legal assistance and advice services etc. which are not covered under the ambit of service tax. The contention is that the Service Tax paid by the appellants on the services which are not covered under the scope of Service Tax are liable to be returned to the appellants.

4. Revenue raised an preliminary objection by saying that refund is not maintainable as the appellants are registered with the Service Tax Authority and regularly paying service tax as per the assessment and they had never asked for provisional assessment under Rule 6 of Service Tax Rule and they never challenged the assessment of Service Tax.

Therefore, the challenge of assessment under refund claim is not maintainable. The Revenue relied upon the decision of the Hon'ble Supreme Court in the case of Collector of Central Excise, Kanpur v. Flock (India) Pvt. Ltd. and Priya Blue Industries Ltd. v. Commissioner of Customs (Preventive), .

5. In this case the appellants are paying Service Tax and filed the refund claim without challenging the assessment made under the Service Tax and in the refund claim the appellants challenging the assessment under the Service Tax on the ground that certain services are not covered under the scope of Service Tax. Therefore, they are entitled for refund.

6. The Revenue raised the issue that without challenging the assessment, refund claim is not maintainable. This issue is settled by the Hon'ble Supreme Court in the case of Collector of Central Excise v. Flock (India) Pvt. Ltd. and Priya Blue Industries Ltd. v. Commissioner of Customs (Preventive) (supra) where the Hon'ble Supreme Court held that order of assessment could not be challenged in the refund claim without filing the statutory appeal against the assessment order. In this case also the assessment order is appealable order and no appeal has been filed by the appellant. Therefore, in view of the above decision of the Hon'ble Supreme Court, I find merit in the contention of the Revenue and the appeal is dismissed.

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