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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-02-2005

Judge : S Kang, Vice

Appellant : Foto Mec. Color Lab

Respondent : Cce

Judgement :

1. Appellant filed this appeal against the order in appeal whereby the service tax along with interest and penalty was imposed on the appellant. Appellant challenged the order regarding demand of service tax on photography service on the ground that the cost of material is not to be included while calculated the Service Tax on photography service. The appellant also submitted that as the appellant had paid the Service Tax along with interest on demand, before issuance of show cause notice, therefore imposition of penalty is not sustainable.

2. The contention of the Revenue is that appellants are collecting a lump sum amount in respect of the Service provided by them. There is no record to show that appellants are selling photographic material separately to their customers. Therefore, Service Tax is to be leviable on the services provided by the appellants.

3. In this case the appellants are providing photography services and photographic services are liable to Service Tax from 16.7.2001. The appellants are assessed to Service Tax for the period 16.7.2001 to 31.3.2003. The contention of the appellant is that the photography material, which is used for providing photography services,

is not to be included in the assessment of Service Tax. Appellant had not produced any evidence to show how they are selling the photographic material to their customers. The appellants are collecting a lump sum amount regarding the services provided to the customers. Therefore, I find no merit in the contention of the appellant. Keeping in of the facts and circumstances of the case as the appellants had paid the Service Tax along with the interest, the penalty is reduced on the appellant to Rs. 25,000/- (Rupees twenty five thousand only), otherwise the impugned order is upheld.

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