Cadbury India Ltd. Vs. Cce

Cadbury India Ltd. Vs. Cce

SooperKanoon Citation : sooperkanoon.com/40021

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-18-2005

Reported in : (2005)(188)ELT166Tri(Mum.)bai

Judge : A Wadhawa, S T C.

Appellant : Cadbury India Ltd.

Respondent : Cce

Judgement :
1. Heard both sides. The lower authorities have confirmed a demand of Rs. 1,21,31,000/- towards service tax and have imposed a penalty of Rs. 2,42,62,000/- for the period July 1997 to September 2001 on the ground that the appellants received services from M/s Cadbury Schweppes Overseas Ltd. (CSOL) which was in the nature of services provided by a 'Consulting Engineer'. The appellants have advanced two main arguments:- (i) CSOL is not an engineering company and did not supply any advice/consultancy/technical assistance in any discipline of engineering and hence service tax is not leviable as CSOL cannot be considered as a Consulting Engineer in terms of Section 65(18) of the Finance Act, 1944. CSOL merely supplied technical know-how in the form of specifications, recipes and procedures.

(ii) During the disputed period July 1997 to September 2001, the recipient of a service was not liable to pay service tax. Only with effect of 16.2.2002 after amendment of rule 2 (1)(b) of the Service Tax Rules, 1994, a person receiving taxable service became liable to pay service tax on behalf of the service provider.

2. The appellants have also cited the following case laws in support of their arguments:-Bajaj Auto Ltd. v. CCE, Aurangabad 3. After going through the submissions and the case records, we find that the period of dispute is clearly prior to amendment of Rule 2(1) (b) of the service Tax Rules, 1994. Since only through this amendment liability to pay service tax was fastened unto a service recipient and the said amendment is prospective, the appellants cannot be made to pay any service tax for the period July 1997 to September 2001 which is prior to the amendment of the rules. Therefore, we are of the view that the impugned demand and penalty cannot be sustained.

4. In view of our finding as above on the second contention raised by the appellants, we do not think it necessary to go into the question as to whether technical know-how received by the appellants amounts to receiving consulting engineer's service.

5. For the reasons stated in paragraph 3 above, we set aside the impugned order and allow the appeal.