

Electropneumatics and Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-31-2005

Judge : T Anjaneyulu

Appellant : Electropneumatics and

Respondent : Cce

Judgement :

2. M/s Electropneumatics & Hydraulics (India) Pvt. Ltd., MIDC, Marol Industrial Area, Andheri (East), Mumbai - 400 093, are engaged in the manufacture of machine tools. They have utilized the services of goods transport operators during the period from 16.11.1997 to 01.06.1998 in connection with their manufacturing activities. However, they failed to pay Service Tax in respect of the services used by them. They claimed exemption of the notification no. 43/97-ST, dated 05.11.97 on the ground that they are SSI unit. But the said contention was negated by the impugned Order-in-appeal. Show cause notice was adjudicated by the Dy.Commissioner confirming the demand of Rs. 48,860/- with interest and imposed penalty of Rs. 500/- under Section 75A, penalty of Rs. 48,860/- under Section 76 and penalty of Rs. 1000/- under Section 77 of the Act.

3. On filing appeal, the Commissioner of Central Excise (Appeals), Mumbai, rejected the same on the ground that the notification is applicable to transport operator and whereas in the instant case, the appellants are not transport operator, but, duty liability was cast on its user. There is divergent view on the same in the appellant's own case, which has been adjudicated by the

Commissioner(Appeals), Pune. He has granted exemption from payment of Service Tax under the said notification.

4. After having considered the matter at length and hearing both sides, I am of the view that there is prima facie case in favour of the appellants. Accordingly, complete waiver is granted from pre-deposit and stay is also from its recovery, pending disposal of the appeal.

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