Tcp Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Sep-01-2005

Reported in : (2006)STR134

Judge : P Chacko

Appellant : Tcp Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. During the period 16-7-1997 to 31-8-1999, the appellants had utilised the services of M/s. Madras Industrial Product Corporation, Erode qua consignment agents. Two show cause notices were issued to them demanding Service Tax (with interest) and proposing penalties, one dated 21-7-2000 and the other dated 8-4-2002 covering the spells 16-7-1997 to 16-10-1998 and 17-10-1998 to 31-8-1999 respectively. Both the original authority and the first appellate authority confirmed the demand of tax against the party. The appellate authority however vacated the penalties imposed by the original authority. The present appeals are against the orders of the Commissioner (Appeals).

2. It is submitted by Id. Counsel for the appellants that the demand of tax raised on them is hit by the Apex Court's ruling in Laghu Udyog Bharati v. Union of India . Reliance is also placed on the decision of this Bench in Commissioner of Central Excise v. EID Parry Confectionery Ltd. . The crucial fact pointed out by Id. Counsel, attracting the case law is that, in both the cases, the demand of Service

Tax was raised in show cause notice issued after 12-5-2000.

3. Ld. SDR reiterates the findings of the original and first appellate au thorities and also relies on the Supreme Court's judgment in Gujarat Ambuja Cements Ltd. v. Union of India in support of his contention that, by virtue of Section 117 of the Finance Act, 2000, recipients of services of consignment agents for the period covered by the said Section should have paid up the tax dues for such period within the extended period granted by the Apex Court in Para 44 read with Para 19 of its judgment.

4. After giving careful consideration to the submissions and the case law cited by both the sides, I find that, under Section 117 of the Finance Act, 2000, which revalidated retrospectively demands of Service Tax for the period froml6-7-1997 to 16-10-1998 and empowered the Government to recover such dues within a period of 30 days from 12-5-2000 (the date on which the Finance Act received Presidential assent), it was up to the Department to issue demand notice within the prescribed period, i.e., before 12-6-2000. In Appeal No. 9/04, the period of dispute is 16-7-1997 to 16-10-1998, for which period a show cause notice had been issued in 29-6-1999 demanding Service Tax on the services received by them during the said period. The said demand was dropped by the original authority as per order dated 29-10-1999 in view of the Apex Court's judgment in Laghu Udyog Bharati (supra). This order of the original authority became final for want of challenge by the Department. Later on, however, the Department issued a show cause notice dated 21-7-2000 raising fresh demand of tax for the above period on the appellants. This demand was beyond the period of limitation prescribed by Section 117 of the Finance Act, 2000. Nevertheless, the party honoured the demand of tax and paid it up. In the above appeal, they have no serious challenge against the demand either. The challenge in the appeal is against levy of interest on the amount of tax paid.

This challenge cannot be sustained inasmuch as the provision of law providing for levy of interest is mandatory. Any tax paid belatedly will carry interest in accordance with law. In the result, Appeal No.9/2004 stands dismissed.

5. In Appeal No. 12/2004, the challenge is against demand of Service Tax and interest thereon for the period 17-10-1998 to 31-8-1999. The challenge against this demand is on the ground that, for the said period, the appellants qua recipient of service of consignment agent was not liable to pay Service Tax on the amount paid for such service.

None of the amendments brought to the Service Tax provisions of the Finance Act, 1994 authorised the Revenue to treat recipients of the above service as assessees for Service Tax for any period beyond 16-10-1998. After a close perusal of the relevant provisions of the Finance Act, 2000 and the Finance Act, 2003, I find that the submission of the Id. Counsel to this effect is factually correct. To sum up the case, the appellants qua recipients of the services of consignment agent was not liable to pay Service Tax on the amount paid by them for such services for any period beyond 16-10-1998 in view of the ruling of the Apex Court in Laghu Udyog Bharati (supra). The Tribunal's decisions in EID Parry Confectionery (supra) is not applicable to the period of dispute in Appeal No. 12/2004. In the result, the order impugned in Appeal No. 12/2004 gets set aside and the appeal is allowed.