

Cce Vs. Prism Cement Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-24-2005

Judge : M Ravindran

Appellant : Cce

Respondent : Prism Cement Ltd.

Judgement :

1. This appeal is by the Revenue against the Order-in-Appeal dated 12.7.2004 wherein the Commissioner (Appeals) held that the assessee is eligible for the refund of the Service Tax paid by them during the exemption period.

2. Relevant facts of the case are that the Respondents are having a depot at Allahabad and are distributing the cement received from their manufacturing premises. For distributing the cement to their stockists/dealers the Respondents are utilizing the service transporters. The Respondents under the wrong appreciation of law, paid service tax on the GTO for the period June, 1998 to September, 1998.

The Respondents, came to know that the said service tax was not payable under provisions of Notification No. 49/98-ST dated 2.6.98. The Respondents preferred a refund claim which was rejected and the matter was brought up to Tribunal. This Tribunal vide its Order No. A/940/04 -NB(SM) remanded the matter back to the Commissioner (Appeals) for deciding the matter afresh with specific direction that the Commissioner (Appeals) should decide the issue whether the unjust

enrichment is applicable to the refund filed by the current Respondent.

The learned Commissioner (Appeals) vide his detailed order dated 12.7.2004, decided the issue in favour of the Respondents herein, holding that there is no unjust enrichment to the Respondents herein.

The Revenue is aggrieved by this Order.

3. The learned D.R. submits that the Commissioner (Appeals) has come to conclusion on the basis of a certificate from a Chartered Accountant and books of accounts (General Ledger) for the relevant period, and that the Chartered Accountant's certificate is not very clear and the same cannot be the reason for coming to the conclusion that unjust enrichment is not there. He further submits that just because there is only debit balance in the books of accounts does not mean that incidence has not been passed on.

4. None appeared for the Respondent despite notice. Hence, I proceed to take up the matter for disposal.

5. Considered the submissions made by the learned D.R. and perused records. I find that the Commissioner (Appeals) has gone in to details of the issue, as per our direction. He has in his order dated 12.7.2004 has dealt very elaborately at Para 8 and Para 9 which are reproduced below:- 8. Respectfully following the judgment of the Hon'ble Supreme Court, it is observed that in the instant case the appellants are not the manufacturer, rather the manufacturer's Depot undisputedly the service tax collected without jurisdiction cannot be retained by the Department. To rebut the presumption as laid down under Section 11B and 12B of the Act, the appellants have produced Central excise invoices, bills raised to dealers, copies of general ledgers and Chartered Accountant (N.M. Raiji & Company, New Delhi) to this effect. On perusal of the bills raised to the dealers/cement agency, it is observed that the freight bills have been reimbursed to such dealers/agencies through debits/credits in the ledger. Later on the service tax incurred on such amounts of freight charges have been paid by the appellants to the Department which has been clearly shown in the ledger by crediting the same towards service tax on G.T.O. In this way the appellant's case is confined to the extent of delivery

of the consignments to the dealers/cement agency. ON a perusal of the records it is established beyond doubt that they have solely borne the service tax, which has not been passed on to the third party.

9. In this regards, the general ledger produced from 01.04.2004 to 27.04.2004 is also relevant, wherein Rs. 1,46,5187- has been shown towards "service tax recoverable accounts". The certificate of N.M. Raiji and Company, Chartered Accountants, New Delhi has certified that a sum of Rs. 1,46,5187- is lying as debit balance in, "service tax recoverable accounts" as on date, i.e. 20.08.2003 in the books of Prism Cement Limited, Allahabad. They have further certified that the said balance of Rs. 1,46,5187- has neither been debited to manufacturing cost or expenses for the production of cement, nor has the said amounts being debited towards the account of accounts of customers. The said amount is lying as debit in "service tax recoverable account", as a sum recoverable from the Central excise authorities at Allahabad.

From the above I find that the Commissioner (Appeals) has applied his mind to the details of the case, and then come to conclusion. The learned D.R. was not able to produce any other evidence contrary to the detailed findings of the Commissioner (Appeals). In absence of any other contrary evidence, it would be mis-carriage of the justice, to allow the appeal of the department. The order of the Commissioner (Appeals) is precise, detailed and has been issued within the four walls of the law, deserves to be upheld, without any reservation.

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