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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-25-2005

Judge : M Ravindran

Appellant : Nirma Architects and Valuers

Respondent : Cce

Judgement :

1. In the present appeal, the appellants are challenging the order-in-appeal dated 28th May, 2004.

2. The relevant facts of the case to be considered are that, the appellants are registered under service tax provisions for rendering services as Architect. The dispute of imposition of service tax on the Architects being pending in various High Courts, the appellants did not file any proper returns in time and also defaulted in depositing the service tax. Show cause notice was issued to the appellants for recovery of the service tax short paid for the quarter october to december, 1999 and imposition of penalty under different Sections. The adjudicating authority confirmed the demand and also imposed penalty under various sections. On appeal, the Commissioner (Appeals) reduced the penalty to the amount of the service tax payable by the appellants, but upheld the other penalties imposed on the appellants under various sections.

3. The learned advocate for the appellants submits that the allegation of short payment of service tax does not stand as they had in fact adjusted the short

payment of service tax against the excess payment by them for the period October 1998 to March 1999. He submits that this adjustment is allowed under Rule 6(3) of the Service Tax Rules. He further submits fairly that there was delay in depositing the amount of Service Tax with the Government, but they had deposited all the service tax and interest thereon by 27th April, 2000. He further submits that imposition of penalty under different sections was waived by the Hon'ble Mumbai High Court in their judgment dated 22nd February, 2001 in W.P. No. 142 of 1999 with W.P. No. 1174 of 2000. He also relies upon the decision of this Tribunal in the case of Chitrita Virnave v. CCE, Patna (T).

4. The learned DR on the other hand submits that the appellants have admitted that they have short paid the duty for the quarter October to December 1999 and the adjustment as sought by them is not permissible under Rule 6(3). He submits that the said Rule contemplates adjustment only in case where the assessee returns the amount back to his customers. On penalty, he fairly concedes that the judgment of the Hon'ble Mumbai High Court is applicable in this case.

5. Considered the submissions made by both sides and perused the records. I find that the appellants have paid an excess amount of Rs. 729 for the period October 1998 to March 1999, which is not disputed by the Revenue. Adjustment of the short payment of Rs. 382 for the period October to December 1999 is the only request sought by the appellants.

I find that this is a fair request inasmuch as that Rule 6(3) of the Service Tax Rules provides for such adjustment. In order to appreciate the same, the said Rule is reproduced below: (3) where an assessee has paid to the credit for Central Government Service Tax in respect of taxable service which is not provided by Page 126 him either wholly or partially for any reason, the assessee may adjust the excess service tax so paid by (calculated on a pro-rata basis) against his service tax liability for the subsequent period, if the assessee has refunded the value of taxable service and the service tax thereon to the person from whom it was received.

It can be seen from the above that the law makers have specifically provided for the adjustment of excess paid to the short payment.

Resorting to a narrow interpretation that such adjustment is possible only if there is a return of Service Tax to the client and relegate the assessee to the rigmoral of refund procedure, would defeat the salutary intention of the law makers. The provisions of Rules 6(3) are for alleviating the difficulties of the assessee, than to create hurdle in smooth functioning of imposition and collection of tax. In my opinion, a narrow interpretation as propounded by DR would make the provisions otiose and non-implementable. I find that, in the interest of justice, the adjustment of short payment of service tax of October to December 1999 by the appellants to the excess payment of October 1998 to March 1999 is well within the law and has to be allowed.

6. As regards the penalty, the judgment of the Hon'ble Mumbai High Court is binding upon me, hence no penalty of any sort person can be imposed on the appellants.

7. In view of the above situation, I allow the appeal and set aside in impugned order.

(Operative part of this of order was pronounced in the open court on 25th October, 2005)

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