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Olympic Zipper Ltd. Vs. Commissioner of Customs and C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-30-2005

Judge : R Abichandani, M T K.C.

Appellant : Olympic Zipper Ltd.

Respondent : Commissioner of Customs and C. Ex.

Judgement :

1. The Applicants have requested for staying the recovery of Service Tax of Rs. 1,52,801 /- and the penalties imposed on them.

2. The Applicants are manufacturers of polyester filament yarn and sewing thread. During the course of internal audit checking of their records, it was found that they have shown Rs. 11,33,504.00 in their balance sheet, as other income for the year 2000-2001 on account of commission from M/s. Avisha International Ltd. for supplying and marketing of goods i.e. garments and booking orders from the purchasers. Accordingly, on investigation, it was found that the Appellants were also receiving sums from M/s. Enkay Zippers Pvt. Ltd. and M/s. Asian Tex Export as commission for providing such services of transport directly or indirectly to arrange despatch of goods. On the basis of this investigation, service tax was demanded from them and the original authority accordingly demanded the above said amount of service tax and also imposed penalties. The Commissioner (Appeals) upheld the order of original authority.

3. It was pleaded before us that the Applicants are not covered under the Clearing and Forwarding agents as defined under Section 65(12) of the Finance Act as they are getting the commission for handling and procuring orders and they are not handling the goods.

4. We have examined the records and we prima facie found that lower authority has given the finding that the applicants were providing the transport service directly or indirectly to arrange the despatch of the goods and maintained records of receipt and despatch of goods.

Therefore, prima facie from the finding of the lower authorities, it appears that the Applicants are covered under the provisions of Clearing and Forwarding Agent and are liable for Service Tax.

5. We accordingly, direct the applicants to pre-deposit a sum of Rs. 75,000/- (Rupees Seventy-five lacs only) within a period of six weeks and report compliance on 16-1-2005. On depositing the said amount, the recovery of balance amount of Service Tax and penalties is waived for hearing the appeal. If the amount of pre-deposit as mentioned above is not deposited within the due date, the appeal shall stand dismissed.

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