

H.L. Papers Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-19-2005

Reported in : (2006)(105)ECC454

Judge : R Abichandani, S T T.V.

Appellant : H.L. Papers Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. Since proper prayer was not made in the stay application, the Misc.

application has been filed, requesting for waiver of condition of pre-deposit and, therefore, we have made this common order in both these applications, in which the applicant has prayed for waiver of pre-deposit of the amount payable under the impugned order.

2. By the order in original, the Deputy Commissioner has confirmed the demand of Rs. 3,76,377/- as service tax payable on the commission amounting to Rs. 75,27,543/- received by the applicants during the year 2001-2002, in lieu of services provided by the applicants and penalty of Rs. 200/- per day under Section 76 from 25.7.2001, besides other penalties as mentioned in the order. According to the revenue, the appellants had rendered services as clearing and forwarding agents. In the appeal preferred against order-in-original, the Commissioner (Appeals) relying upon the decision of this Tribunal in Prabhat Zarda Factory

(India) Ltd. v. Commissioner confirmed the order in original by holding that the services rendered by the appellant during the relevant period, were covered within the ambit of definition of Clearing and & Forwarding Agents.

3. We have heard the learned Counsel for the appellant and the learned authorised representative for the department at length. It appears from the record that the only piece of evidence on which reliance was placed for holding that the appellant had rendered service as clearing and forwarding agent was the set of commission bills of the appellant, which showed that the appellant had claimed commission in respect of various goods sold to the parties shown in these bills. It is stated by the learned Counsel for the appellant that none of the bills, which the appellant had submitted for charging its commission, mentioned about clearing and forwarding of the goods. Mere procurement of orders without anything more may not amount to clearing and forwarding of the goods. There is no material discussed in the impugned order, which can indicate the activity of clearing and forwarding of the goods. We, therefore, find that appellant has made a prima facie case for total waiver of pre-deposit. We, direct that there shall be interim stay of the impugned order and the appeal will be heard without any pre-deposit being made.

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