Commissioner of Central Excise Vs. Printotech Global Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-26-2005

Reported in : (2007)6STT346

Judge : M T K.C.

Appellant : Commissioner of Central Excise

Respondent : Printotech Global Ltd.

Judgement :

1. M/s. Printotech Global Ltd. entered into a contract with M/s. Yuan Harng Co. Ltd. (hereinafter referred to as 'YHCL') for technical collaboration on 15-9-97. M/s. YHCL was to provide to the respondents technical know how for the manufacturing Mono layer seamless tube. The services provided by M/s. YHCL to the respondents were categorised under the services of consulting engineers and the respondents were asked to pay the service tax on the gross amount paid by them as technical assistance fee to M/s. YHCL, Taiwan. Show cause notice was issued to the respondents demanding service tax and also imposing penalty on them for not filing the returns. The original authority demanded service tax and imposed penalty on M/s. YHCL and M/s. PGL jointly and severally. However, the Commissioner (Appeals) under the impugned order observed that the present respondents were the service receiver and the service was provided by M/s. YHCL, Taiwan prior to 1-3-99. During that period, M/s. YHCL, Taiwan, were legally required to pay the service tax on the taxable value of services rendered by them.

The Commissioner (Appeals) observed that the demand of service tax relates to the period prior to the introduction of provisions under Rule 6 of Service Tax Rules holding the service receiver to bear the liability of tax. This provision was introduced w.e.f 28-2-99 where it was provided that in case of a person who was a non-resident or was from outside India and did not have any office in India, the Service Tax thereon could be paid by any other person authorised by such service provider in this regard. Accordingly, he held that at the material time the present respondents, being service receiver, were not liable for payment of any service tax.

2. It was argued for the Revenue that as per Article 5(11) of MOU dated 15-9-97, "all the above fees are net of taxes as per Indian Laws". It was therefore, argued that the respondents were liable to deduct the service tax and pay to the Government. Accordingly, the order of the Commissioner (Appeals) is not correct in law and the same may be set aside.

3. On behalf of Respondent, it was pleaded that meaning of "net of taxes" has already been clarified by this Tribunal in case of Bajaj Auto Ltd. v. CCE, Aurangabad para 5), it was held that "having regard to the language of the relevant provisions of Income Tax Act 1961, and to the provisions of Finance Act and Service Tax Rules and to the Tribunal's decision in case of Navinon Ltd. v. CCE. Mumbai-VI , (Order No. A/713/WZB/2004 dated 13-8-2004). In this order, relating to recovery of service tax from the appellants for consulting engineers service rendered to Ciba Geigy Ltd., the Tribunal has held that there is no provision like Income Tax Act, 1961, to deduct tax at source in case of source tax and in the absence of such provisions the appellants are not required to deduct service tax and deposit/pay the same to the department". The original authority had given the meaning of net of taxes that the obligation to pay service tax was on the respondents.

However, liability of tax on the respondent is only in respect of the tax which is deducted at the sources i.e. Income Tax and no other tax which is not deducted at the source. In the circumstances, prior to 28-2-99, when the amendment was made in Rule 6 by Notification No.1/99-ST, dated 28-2-99, the respondents were

not liable to pay any service tax for the services received by them from a foreign service provider.

4. I have considered the submissions made by both the sides. I find that the reliance placed by the Commissioner in their appeal petition on the agreement between the respondents and M/s. YHCL to the effect that the payments will be made by M/s. PGL to M/s. Y.H.C.L. net of taxes treating the service tax payable by the respondents is not correct. The respondents could have deducted only that tax which is deductible at the source according to Indian Laws i.e. the income tax and no other tax unless they are authorised by the provider of the services to pay the tax on their behalf to the Government. In the present case, since the services were provided prior to 28-2-99, therefore, receiver of the ser-vices was not liable to pay the service tax. There was no authorisation by the provider of service to appellant to pay service tax on their behalf. Therefore, demand of service tax on the respondent and imposition of penalty on them at relevant time is not according to the provisions of law. The Commissioner (Appeals) has correctly decided the issue and his order need not to be interfered with.

5. Therefore, the appeal of the Revenue has got no merit and it is rejected.