Commissioner of Central Excise Vs. R.K. Marble Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-03-2006

Judge : M T K.C.

Appellant : Commissioner of Central Excise

Respondent : R.K. Marble Ltd.

Judgement :

2. The respondents, M/s. R.K. Marbles Ltd. were availing services provided by the Goods Transport Operators during the period from 16-7-97 to 16-10-98. They did pay service tax on the amount of freight paid by them to the Goods Transport Operators. Therefore, they were asked by the Superintendent to furnish details of total amount paid to the Goods Transport Operators in lieu of services provided, under his letter dated 12-4-2002. Subsequently, they were issued show cause notice dated 11-7-2002 demanding service tax of Rs. 7,89,958/- under Section 73(a) of the Finance Act, 1994 and also proposing to impose penalty and recovery of interest. The original authority confirmed the demand of Rs. 3,48,184/- under Section 73(1)(a) of the Finance Act, 1994 and did not impose any penalty. The Commissioner (Appeals) under the impugned order held that no tax can be recovered from the appellants (present respondent).

3. In their appeal, the Revenue has pleaded that the Tribunal in case of L.H. Sugar Factories Ltd. v. CCE, Meerut-11 has decided the issue but it has not attained the finality and Department has filed an appeal before the Hon'ble Supreme Court against the said decision of the Tribunal. Section 117 of the Finance Act, 2000

revalidated the provisions of Sub-clause (xvii) of Clause (d) of Sub-rule (1) of Rule (2) of Service Tax Rules, 1994. A combined effect of Section 116 and 117 of the Finance Act, 2000, is that in case of Goods Transport Operators Services, person receiving the services of Goods Transport Operators becomes the "assessee" and is liable to pay the Service Tax. Therefore, in the light of Section 116 and 117 of Finance Act, 2000, the respondents were required to file returns and to pay the tax for the period from 16-11-97 to 1-6-98.L.H.Sugar Factories Ltd. v. CCE, Meerut-II has decided the identical issue. In case of L.H. Sugar Factories, it was held that even the amended Section 73 takes only the cases of assessees, who are liable to file returns under Section 70. The liability to file returns is cast on the appellants only under Section 71A and not under Section 70. They are not covered under Section 73.

The cases of the persons who come under Section 71A is not brought under the net under Section 73. Since the respondents were made liable to file returns under Section 71A by the retrospective amendment of Finance Act, 1994 relating to Service Tax by the Finance Act of 2003, therefore, the provisions of Section 73 are not applicable in their case.

5. I have considered the rival submissions. I find that the facts of this case are identical to the facts of the case of L.H. Sugar Factories Ltd. The decision of this Tribunal in case of L.H. Sugar Factories Ltd. (supra) has been upheld by the Supreme Court in case of CCE, Meerut v. L.H. Sugar Factories reported in 2005 (187) E.L.T. 5.

Section 73 to the Finance Act, 1994 covers the cases of assessees, who are liable to file return under Section 70. Liability to file return on the respondent was under Section 71A. Therefore, show cause notice issued under Section 73 is not maintainable. Accordingly, the appeal of the Revenue is rejected.