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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT

Decided On : May-17-2006

Reported in : (2007)6STT156

Judge : S Peeran, J T T.K.

Appellant : Foto Flash

Respondent : Commissioner of C. Ex.

Judgement :

1. The appellant is required to pay service tax under two headings (a) an amount of Rs. 41, 69,972/- on account of use of raw materials in the photographic services (b) an amount of Rs. 31,04,826/- being the service tax on development of processing of photographic films under the heading 'Photography Services'.

2. With regard to the first issue, the learned Counsel submits that it is no longer res integra and in an identical facts and circumstances in a competitor's case the issue has been decided by this bench in the case of Adlabs v. CCE, Bangalore reported in 2006 (2) S.T.R. 121.

3. With regard to the second issue, the learned Counsel submits that photographic services were rendered to the studios, who receive the negatives from the customers for processing and developing the films.

The appellants had given all the details of the studios from whom they have received the material for photography services. They had brought to the notice of

the Department that the said studios had discharged the service tax and therefore, they were not liable to pay service tax.

It is their contention that even in terms of the various definitions, they do not come within the ambit of service tax. He contends that the Department had six months time after they furnishing the details to make queries with the concerned studios, who were covered under the Service Tax Act and paying duty to verify the fact of they being sub-contractor and the duty having been discharged by the said principal studios. He submits that no such investigations were done and therefore, the appellants cannot be burdened with the service tax.

4. The learned SDR submits with regard to the first issue that the appellants have not mentioned the details of inputs used in photography services in the invoices and have also not maintained proper registers.

Therefore, the finding recorded by both the authorities on this point is required to be upheld and the appellant should be put to terms. In so far as the second payment is concerned, the learned SDR submits that the appellant do not have a case in their favour. It was their duty to have produced the contracts entered with the studios and also to prove that the studios have discharged the service tax. The appellants have not done so. The initial burden on the Revenue has been discharged in showing that the appellant having rendered the said photography services. If the stand of the assessee is that their sub-contractors and the principal studio has paid the duty, then they should have produced the evidence along with proof of payment of tax. For lack of evidence, they cannot plead before the Tribunal that the Revenue has not discharged their burden. He prays for putting the appellants on terms.

5. On a careful consideration, we notice that so far as the first issue is concerned, prima facie the issue is fully covered by the ruling rendered by this bench in the case of M/s. Adlabs (supra). In so far as the second issue is concerned, we are not convinced with the arguments raised by the learned Counsel. There is no evidence produced on behalf of the principal studio about the service tax discharged on the activity carried out by the appellant and returned to the principal studios. Prima facie, the appellant should pre-deposit a sum of Rs. 5,00,000/-

(Rupees Five Lakhs Only) as against demand of Rs. 31,04,826/- within a period of two months. On such pre-deposit, the balance of service tax and penalties stands waived and recovery stayed.

To report compliance on 20th July 2006. The matter will be taken up for final hearing on 9th August 2006, as the tax and penalty exceeds more than Rs. 1.4 crores. There shall be no recovery till the pendency of the appeal.

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