

Umrao Traders Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-14-2006

Reported in : (2006)(106)ECC433

Judge : R Abichandani, S T T.V.

Appellant : Umrao Traders

Respondent : Commissioner of Central Excise

Judgement :

1. The applicant is challenging the order of Commissioner (Appeals) made on 27-4-2006. In the impugned order, the learned Commissioner (Appeals) has observed that the activities of the appellant was clearly related to clearing and forwarding operations. It is argued before us that, the appellant only performs the activities of indenting and payment collection agent. On the other hand, from the record before us, more particularly, the letter addressed to the appellant by IBP on 4th April, 2001, it is crystal clear that the appellant has been appointed as a consignment/handing agent w.e.f. 1-4-1999 subject to certain terms & conditions which, prima facie, indicate the nature of operations fully covered under the definition of "Taxable Services". For instance, as per the terms and conditions, the appellant is concerned with the distribution as well as transportation of the material besides storage in their magazine and forward supplies to the customers as the case may be. The appellant is also responsible in terms of Annexure-1 which clearly assigns responsibility of supply on the appellant. Further, vide Annexure-2 of the said letter, the following responsibilities of consignment agent has been

assigned to the appellant: Provide adequate number of explosive vans for transportation of explosive from BP's Plants to your magazine.

Raise Indents on Korba Plant, through your Controlling Officer.

Ensure timely supply as per customer requirement/indents.

To collect receipted copies of delivery challans, raise invoices and submit to the customers.

Collect regularization letter for excess supply over allocation.

Collect sales proceeds from customer. Collection of monthly Bank Statement from the Banks. Collect Sales Tax Declaration Forms.

Ensure compliance and maintain all records as per Explosive Rules and directions of the Company and submit Sales Day Book, Stock Statement, Stock Transfer Notes, Invoices and such other reports, as may be directed by the Company from time to time.

Obtain all statutory licenses including renewal thereof as per Explosives Rules.

Sales promotion and Publicity as per directive of the Controlling Officer and requirement of the market.

2. Having heard both sides and perused the record, it appears that, prima facie, the appellant has been rendering the taxable service of clearing and forwarding agent. Keeping in view the facts and circumstances, we direct the appellant to pre-deposit the entire amount of tax demanded in the impugned order within six weeks from today, failing which the appeal shall stand dismissed. On depositing the said amount, the remaining amount of penalty demanded under the impugned order, shall stand waived and recovery stayed till the matter is finally taken up for hearing.

3. To come up for reporting compliance and further orders on 3rd November, 2006.