SunwIn Technosolutions Pvt. Ltd. Vs. Commissioner of C. Ex.

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SooperKanoon Citation : sooperkanoon.com/43698

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Calcutta

Decided On : Sep-18-2006

Reported in : (2007)7STT109

Judge : T Anjaneyulu

Appellant : SunwIn Technosolutions Pvt. Ltd.

Respondent : Commissioner of C. Ex.

Judgement :

1. Heard both sides. This is an application under Section 35 of the Service Tax Act, 1944 (sic) [Central Excise Act], filed by the appellants to waive the pre-deposit of the service tax, interest and penally demanded and to grant stay of its recovery.

2. Being aggrieved by the Order of the Commissioner (Appeals), Customs and Central Excise, Patna who in turn upheld the Order of the Joint Commissioner, Central Excise, Ranchi, the present appeal is filed along with the Stay Petition.

3. The Joint Commissioner in his impugned Order confirmed the demand of Service Tax (including Education Cess) of Rs. 5,79,644.00 (Rupees five lakh seventy-nine thousand six hundred and forty-four) for the period relating to 11-9-2001 to 16-3-2005 under Section 73 of the Finance Act, 1994, and imposed a penalty of Rs. 1,000.00 (Rupees one thousand) under Section 77 of the Finance Act, 1994.

4. The appellant is running a Computer Training Centre at Ranchi, under a Licence Agreement with NIIT Ltd. At the said Centre, the appellant imparts training to the trainees in relation to computer software.

Training or coaching services provided to any person by a commercial training or coaching centre are taxable under Sub-clause (zzc) of Clause (105) of Section 65 of the Finance Act, 1994 read with clauses (26) and (27) thereof.

4.1 Under Notification No. 24/2004-ST dated 10-9-2004, the taxable services provided in relation commercial training or coaching by a vocational training institute, were fully exempted from the levy of the service tax. The explanation given under the said Notification defines "vocational training institute", which means a commercial training or coaching centre, which provides vocational training or coaching that imparts skills to enable the trainee to seek employment or undertake self-employment, directly after such training or coaching. Subsequently the said Notification was amended by Notification No. 19/2005-ST dated 7-6-05 with effect from 16-6-05. By virtue of the said amendment, Clause (ii) was inserted. In the Explanation after Clause (ii), the following Clause (iii) was inserted, which reads as follows : (iii) 'computer training institute' means a commercial training or coaching center which provides coaching or training relating to computer software or hardware.

4.2 It is the submission of the appellant that prior to 16-6-2005 when Notification No. 19/2005-ST dated 7-6-05 came into force, the computer training centre run by the appellant is squarely covered by the definition of the vocational training institute under Explanation No.(i) of the Notification No. 24/2004-ST dated 10-9-2004 and is entitled to the benefit of the same. But the Department insisted on the appellant to register his company under Section 69 of the Finance Act, 1994. Therefore, the appellant made an application for registration under protest on 18-3-05. Subsequently, a show cause notice dated 20-7-05 was issued demanding service tax for the period from 11-9-04 to 16-3-05 and the same had been confirmed as stated supra.

4.3 The appellant submits that they were giving skilled training to the trainees in order to seek employment directly after such training or coaching and their institution is squarely covered by vocational training institute. According to the learned Counsel for the appellant, the insertion of the proviso in the above-referred Notification with effect from 16-6-2005, shows that the services rendered by the appellant were hilly exempted. The amendment is not clarificatory in nature, as held by the adjudicating authority. The appellant relies upon the following decisions of the Tribunal : (i) BPL Mobile Communications Ltd. v. CC reported in 2000 (126) E.L.T. 986 (Tri.) (confirmed by the Honourable Supreme Court); (ii) Usha Martin Telekom Ltd. v. CC reported in 2001 (138) E.L.T. 839 (Tri.-Cal.) (confirmed by the Honourable Supreme Court).

In the aforesaid decisions, exemption has been allowed to computer software for tele-communication purposes, imported by the respective appellants for their Mobile Switching Centres. In those two cases, exemption was claimed under Notification No. 11/97-Cus. dated 1-3-1997, which was amended by Notification No. 3/98-Cus. dated 11-2-98, wherein the definition of the computer software was added to the principal Notification.

5. Learned D.R. has argued in support of the impugned Order. He has pointed out the relevant finding of the Joint Commissioner, which I extract below for better appreciation : But the same is not acceptable because under the earlier Notification No. 9/2003-ST dated 20-6-2003, computer training institute were specifically covered under exemption during the period 1-7-03 to 30-6-04. The new Notification applicable during the material period of the SCN i.e. 24/2004-ST dated 10-9-04 omitted 'computer training institute' for exemption.

The above-referred finding appears to be not tenable in view of the contentions raised by the learned Counsel for the appellant and the case-law cited in support of his contentions. At this prima facie stage, 1 am in agreement with the contentions raised by the learned Counsel for the appellant. As there is any amount of force, I am of the view that they are entitled for waiver of the pre-deposit of the Service Tax confirmed along with the penalty and interest, and the same is granted with the stay of its recovery pending disposal of the appeal. The Application is disposed off accordingly. List the appeal in its turn.