

Filament India Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-08-2006

Reported in : (2007)(114)ECC365

Judge : M Ravindran

Appellant : Filament India Ltd.

Respondent : Cce

Judgement :

1. This appeal is directed against order in appeal dated 10/03/06 that upheld the order in original vide which demand of interest on service tax and penalty was upheld. 2. The relevant fact that arise for consideration are the appellant was availing the services of the goods transport operators during the period 16/11/97 to 02/06/98. Without any demand or any direction from the revenue, the appellant deposited the duty liability of service tax on his own on 29/08/02 vide TR-6 challan. Revenue issued a show cause notice to the appellant for imposition of interest and for penalty under Section 77 and for appropriation of the amount of the service tax paid by the appellant. The adjudicating authority appropriated amount paid by the appellant as service tax and imposed interest on them and also imposed penalty. On an appeal, Commissioner (Appeals) upheld the order concurring with the findings of the adjudicating authority.

3. The learned authorized representative appearing on behalf of the appellant submits that the service tax liability as appropriated by the order in appeal is not

payable by them in view of the findings of the Tribunal in L.H. Sugar Factory case. It is his submission that the interest and penalty which is paid by them is not at all demandable from them. For the reason that they have deposited the service tax amount before the issuance of the show cause notice.

4. Learned DR on the other hand submits that the amount paid by the appellant on their own vide TR-6 challan dated 29/08/2002 is based on their own calculation and hence the judgment of the L.H. Sugar Factory is not applicable in this case. It is his submission that having paid service tax belatedly, the appellant is required to discharge the interest.

5. Considered the submissions made by both sides and perused records.

It is noticed on perusal of show cause notice that the said show cause notice is only demanding an interest from the appellant. The relevant portion in the show cause notice is reproduced below: Now therefore M/s Filament India Ltd., Bhiwadi are hereby called upon to show cause to the Deputy Commissioner Central Excise Division, Bhiwadi within 15 days from the receipt of this notice as to why 1. Service tax amounting to Rs. 104490/- (One Lac Four Thousand Four Hundred Ninety only) should not be appropriated in the Govt. account as per amended Section 73 of Finance Act, 2004.

2. Interest short paid amounting to Rs. 54793/- for the period from 12.05.2000 to 29.08.2002 on service tax amount already paid should not be recovered from them under Section 75 of the Finance Act, 1944.

3. Penalty under Section 77 of the Finance Act, 1944 for failure to furnish prescribed return should not be imposed upon them.

6. As regards the submissions made by the learned authorized representative that the amount of service tax paid by them vide TR-6 challan is not service tax liability, I find that the Division Bench of the Tribunal in the case of J.K. Industries Ltd v. CCE, Indore as reported at 2006 (3) STR 14 (Tri Del) has clearly held if the amount paid by the assessee on his own calculation without any direction or demand from the revenue, the said amount is not refundable. The relevant

paragraph is reproduced as under: 9. The service tax paid on the basis of self-assessment as per the statutory provision was a valid collection of tax by the government and therefore, it was in no way refundable to the appellant who was liable to pay the same under the amended provisions.

The contention that the appellant was not liable to pay the service tax since the recover would have been time barred on the basis of the deemed liability having been arisen earlier on the expiry of the relevant period in 1998, is, therefore, wholly misconceived.

7. In the present case, it can be seen from the reproduced portion of the show cause notice that there was no demand of service tax under Section 73 of the Finance Act, 2004 but the amount paid by them was appropriated. As regards the interest paid demanded from the appellant, I find that the issue is now squarely covered in favour of the appellant in the case of Green Ply Industries Ltd. v. CCE, Jaipur as reported 2006 (4) STR 241 (Tri-Del).

8. As regards the penalty, I find that as per Section 71A of the Finance Act 1994, the appellants were required to file the return in respect of services received from GTO by November 2003, but in this case appellants have filed the returns in December 2003, hence they have not followed the provisions specifically created for the service receivers from GTO. Hence, the penalty imposed on the appellant is upheld. 9. Accordingly, in the facts and circumstances of the case, the appellant's appeal regarding the interest being not payable is allowed, while the appellant's appeal against setting aside of demand of service tax and penalty is dismissed. Appeal allowed partly as indicated in above paragraphs.

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