Commissioner of Central Excise Vs. Satpuda Tapi Ssk Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Dec-07-2006

Reported in : (2007)10STJ55CESTAT(Mum.)bai

Judge : T Anjaneyulu

Appellant : Commissioner of Central Excise

Respondent : Satpuda Tapi Ssk Ltd.

Judgement :

1. Heard both sides. This appeal is filed by Revenue for setting aside penalty amount imposed under Section 76 of Service Tax Act. The assessee also filed cross objections against confirmation of service tax amount.

2. The Respondent herein is a Co-operative Sugar Factory engaged in the manufacture of Sugar, Molasses etc. in its factory. It requires Sugarcane for the activity of manufacture and getting it transported to its factory from the farmers. According to the Respondent there was a tripartite agreement in between the goods transporter and farmers. The Respondent's factory used to pay the transport charges and advances on that account on behalf of the farmers and at the first instance deduct the same out of the amount of sugar cane purchased from the farmers.

Therefore, contention of the Respondent is that neither it is a service receiver nor a service provider. Therefore, the respondent factory is in no-way liable for

payment of service tax and requires registration for the purpose under the said Act.

3. The Legislative history in respect of this kind of services was first introduced in the year 1997 bringing goods transport operators in the net of service tax. However, the goods transport operators were agitating on this issue. It appears that the department also sought to levy service tax from the service receiver of the transport operators.

On this account also there was dispute by all the factory owners of small scale units. As they were brought under net work of the service tax there was also a litigation under the cause titled as Laghu Udyog Bharti v. Union of India. The Hon'ble Supreme Court had settled the issue holding that service tax cannot be collected from service receiver. This is reported in the year . In the year 2000 there was amendment of validating clause for stalling the refund to be claimed by factory owner in 2001, Section 71 of the Finance Act was amended to bring the service receiver also under the net work of service tax. This amendment has been brought with retrospective effect from the year 1997. During the year 2003 validating provisions were made in the finance act for recovery of service tax from the back date i.e. 1997 from the service receiver. This legislative changes have been innovated to overcome the difficulties of the case in Laghu Udyog Bharti.

4. In the background of above legislative changes in the finance act, the further contention of the respondent is that even if it assumed that they are service receivers, they are not liable to pay service tax, as the validating Provision to collect the tax retrospectively came into force during the year 2003, but whereas show cause notice was issued on 15.10.2001. The Respondent's contention is that the show cause notice dated 15.10.01 cannot pre-empt to 2003 validation unless there is a fresh show cause notice after the validating provision is incorporated, the demand cannot be confirmed against the show cause notice dated 15.10.2001.

5. On perusal of both the impugned orders, there appears to be no discussion on the exact contention raised by the respondent - Sugar factory. In the light of the facts and circumstances of the case the contentions raised by both sides requires

to be reconsidered and matter be adjudicated afresh by the Commissioner (Appeals). Therefore, the appeal is remanded back for fresh adjudication by the Commissioner (Appeals) in denovo proceedings, keeping open all the issues.

Accordingly, appeal is allowed in remand in above term and including the cross objections.