

Cpc (P) Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Dec-28-2006

Reported in : (2007)7STR191

Judge : K T P.

Appellant : Cpc (P) Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. This is an application filed by the appellants seeking waiver of predeposit and stay of recovery of the Service Tax demanded in the impugned order.
2. The Commissioner of Central Excise, Coimbatore has passed the impugned Order-in-Revision No. 3/2006 (Service Tax) elated 4.7.2006 in terms of Section 84 (5) of the Finance Act, 1994 as amended on review of the Order-in-Original dated 28.7.04 passed by the Assistant Commissioner, Coimbatore I Division . The Assistant Commissioner, Coimbatore I Division had dropped the proposal to demand Service Tax on the Goods Transport Operator's service availed by the appellants during the period 16.11.1997 to 2.6.1998 following the ratio of the decision of the Tribunal in the case of L.H. Sugar Factories Ltd. v. CCE, Meerut II . After hearing both sides and after dispensing with predeposit, the main appeal itself is taken up for final disposal.

3. Appearing on behalf of the appellants, Ld. Consultant submits that, in the instant case, Show Cause Notice had been issued on 14.11.2002 proposing to demand the impugned amount invoking Section 73 of the Finance Act. He submits that the order passed by the original authority in 2004 was in time with the ratio of the judgment of the Hon'ble Apex Court in the case of CCE, Meerut v. L.H. Sugar Factories 2005 (187 ELT 5 (SC) on an identical issue. Therefore the impugned order passed disposing of the same Show Cause Notice confirming the demand under Section 73 of the Finance Act is not sustainable in law. Ld. Consultant took me through the impugned order wherein the Commissioner had observed that the Hon'ble Supreme Court had admitted Civil Appeal No.1618/05 filed by the Commissioner of Central Excise, Vadodara 1 on 22nd August 2000 within days of the Hon'ble Supreme Court's decision in L.H.Sugar Factories Ltd case to justify his decision contrary to its ratio.

Following the same reasoning, the Commissioner had decided that the sustainability of the basic Show Cause-Notice could not be doubted or questioned. Ld. Consultant disputes this finding and also the finding in the impugned order to the effect that Section 71 A of the Finance Act, 2003 had not relaxed the requirement to pay service tax on Goods Transport Operator's service availed by the appellants during 16.11.1997 to 2.6.1998.

4. Ld. SDR submits that the impugned order is sustainable and that Section 71 A enacted in the Finance Act, 2003 required persons who had availed Goods Transport Operator's service during 16.11.97 to 2.6.98 to file return in Form S'F 3 B within a period of six months from the date Finance Act, 2003 received assent of the President on 13.5.2003.

Therefore, in terms of the said Section the appellants were required to pay Service Tax demanded and file return.

5. I have carefully examined the records and considered the submissions made by both sides. It is seen that while passing the impugned order, the Commissioner has not followed the ratio of the decision of the Apex Court in L.H. Sugar Factories Ltd. case (supra) which had dealt with the same issue as covered by the impugned order. Commissioner cannot pass an order inconsistent with the

judgment of the Apex Court dealing with the same question for the reason that it had subsequently admitted a Civil Appeal filed by the Department in a different case, reportedly on the same issue. The Commissioner had demanded the amount of Rs. 1,26,6647- under Section 73 of the Finance Act 1994 and had imposed an equal amount as penalty on the appellants. In the case of CCE Meerut v.L.H. Sugar Factories Ltd. (supra), the apex Court extracted the following finding of the Tribunal in the decision impugned before their lordships and recorded their agreement of the same.

The above would show that even the amended Section 73 takes in only the case of assesseees who are liable to file return under Section 70. Admittedly, the liability to file return is cast on the appellants only under Section 71 A. The class of persons who come under Section 71A is not brought under the net of Section 73. The above being the position show cause notices issued to the appellants invoking Section 73 are not maintainable.

It is seen that the Tribunal had also considered the sustainability of demands invoking Section 73 subsequent to enactment of Finance Act, 2003. In the circumstances, the impugned order is not sustainable and accordingly the appeal is allowed.

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