

Sharma Roadlines Vs. C.S.T.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-09-2007

Reported in : (2007)9STJ203CESTATNew(Delhi)

Judge : N T C.N.B., M Ravindran

Appellant : Sharma Roadlines

Respondent : C.S.T.

Judgement :

1. The applications are directed against service tax demand made against the appellant and penalties imposed. The impugned order has held that the appellant was rendering the service of C&F Agent to M/s.

EIL.

3. The contention of the appellant is that it was transporting fly ash from NTPC's power plant (where they accumulated) to the asbestos plant of M/s. EIL and that service has been incorrectly adjudged as clearing and forwarding service.

M/s. Eternit Industries Ltd. Kymore (subsequently known as M/s.

Everest Industries Ltd. and hereinafter referred to as the E.I.L.) is a part of ACC Group of companies and is engaged in manufacture of Asbestos Sheets having production units at Kymore (MP), Kolkata, Lakhmapur (Nashik District) and Padanur (near Coimbatore). They appointed transportation agents for supply of fly

ash. Some of its C&F agents were also functioning as the suppliers of fly ash, which is a waste material generated by power plants and was supplied free of cost. These C&F/transportation agents lifted fly ash from various thermal power plants on behalf of M/s. EIL, packed it in gunny bags and after proper storage made arrangements for its transportation to the units of M/s. EIL.Coal Handlers Pvt.

Ltd. v. CCE, Kolkata 2006 (3) S.T.R. 286 the Tribunal held the coal handling agent to be a Clearing and Forwarding agent.

6. From the record (and the finding), we are of the opinion that the appellant is essentially rendering the service of transportation. The decision in the case of Coal Handlers Pvt. Ltd.(supra) may not be attracted to the present case.

7. In the result, the stay applications are allowed and recoveries stayed till the disposal of the appeals.

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