

Commissioner of Central Excise Vs. Dsp Merrill Lynch Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Feb-23-2007

Reported in : (2007)(116)ECC567

Judge : J Balasundaram, Vice, A T K.K.

Appellant : Commissioner of Central Excise

Respondent : Dsp Merrill Lynch Ltd.

Judgement :

1. Revenue is aggrieved by the order of the Commissioner of Central Excise (Appeals) dropping service tax demand raised on the respondents herein for the period 16.10.1998 to 31.03.1999 on the ground that the demand raised in the show cause notice dated 17.09.2001 is barred by limitation.

2. We have heard both sides. We find that the appellants were registered as share brokers but the department found that they were also acting as consultants for merger & acquisitions of companies and received Rs. 634.50 Lakhs for this service but had failed to pay service tax thereon in spite of rendering management consultancy services. Vide letter dated 30.11.1999, the Assistant Commissioner (Service Tax) communicated to the respondent herein that since they had provided consultancy service by way of acting as a consultant for merger and acquisition of companies, they were liable to pay service tax. The respondent filed Writ Petition No. 1257 of 2000 before the Bombay High Court which vide its order dated 07.11.2000 directed that the Central Board of Excise & Customs should lay

down parameters on the issue as to whether financial advisor are management consultancy for the purpose of liability to service tax. The High Court also directed the department not to act until the decision of the Board. The CBEC vide its Circular F. No. 177/2/01/CX-4 dated 27.06.2001 (Section 37B Order No. 1/1/01-ST) clarified that advisory services rendered in merger and acquisition transaction are also includable under taxable service rendered by management consultant and that this service will be liable to service tax accordingly. After the issue of this Circular, under Section 37B show cause notice was issued in September 2001 for recovery of service tax for the period from October 1998 to March 1999.

Since there was a doubt as to whether advisory service on merger and acquisition of companies was a service provided by management consultants, the High Court had directed that this position be clarified by the CBEC and the matter was clarified as above by the Board in June 2001. In these circumstances it cannot be held that the respondent knew or must have known that their rendering of financial advisory services for merger and acquisition of companies was in the nature of the management consultancy services so as to attract liability to service tax and that therefore, not paying service tax during the period in dispute amounts to suppression of the fact that they were management consultant with an intention to evade payment of duty so as to make available to the department, the extended period of limitation. In this view of the matter, we agree with the finding of the Commissioner (Appeals) that in the present case, the extended period of limitation cannot be applied against the assessee and that the demand is barred by limitation and accordingly uphold the impugned order and reject the appeal.

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