

Corporate Debt Management Vs. Commissioner of Central Excise

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

Decided On : Feb-28-2007

Reported in : (2007)(118)ECC132

Judge : P Chacko, K T P.

Appellant : Corporate Debt Management

Respondent : Commissioner of Central Excise

Judgement :

1. The Lower authorities have demanded service tax of Rs. 1,86,433/- from the appellants in respect of the service rendered by them to their clients during October 2003 to February 2005. They have also imposed on them a penalty of Rs. 3,74,366/- The present application seeks waiver of predeposit and stay of recovery in respect of the tax and penalty amounts. There is no representation for the party. The hearing notice issued to them has come back with the postal remark: "left without instruction". It appears from the records that the party did not turn up before the Commissioner (Appeals) also despite repealed notices.

Apparently, the interim order issued by the Commissioner (Appeals) directing predeposit of Rs. 1.5 lakhs under Section 35F of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994 was not received by the party. In the absence of evidence of predeposit, the appellate authority dismissed the party's appeal for want of compliance with Section 35F *ibid*, which is under challenge in the appeal before us.

2. The appeal was filed on 20.11.2006 against the appellate Commissioner's order dated 8.8.2006. Apparently, the impugned order was received by the party. We find that the address shown in the memorandum of appeal before us is different from the address to which the impugned order was issued, indicating that there was a change of address in between. The hearing notice of the Tribunal was issued to the address shown in the memorandum of appeal. That notice has now come back. No further change of address has been notified to the Registry by the appellants. In the circumstances, we are not inclined to keep the present application and appeal pending any longer.

3. It appears from the records that the appellants were engaged in the activity of collecting payments on behalf of clients like M/s. ICICI Limited and M/s. LIC Housing Finance Corporation Limited, from customers of such clients during the aforesaid period. This service was classified as "Business Auxiliary Service" and the above demand was raised. It is the appellants' case that the very same service has been categorized as "Recovery Agent's Service" by the Department from the date on which the latter service was introduced as a taxable service under the Finance Act, 1994. Hence it is not open to the Department to treat the same service as "Business Auxiliary Service" for the period of dispute. Ld. SDR has contested this claim of the assessee on the ground that the above service rendered by them to the financial institutions was squarely covered by the residuary clause of the definition of "Business Auxiliary Service" under Section 65(19) of the Finance Act, 1994.

4. After a perusal of the provisions cited by Ld. SDR, we find that the activity undertaken by the appellants during the period of dispute, by its nature, would get covered within the scope of "any incidental or auxiliary support service" under the definition of "Business Auxiliary Service" inasmuch as "collection or recovery of cheques" is one of the illustrations of "incidental or auxiliary support service", given in the statute. Ld. SDR submits that the appellants were collecting equated monthly instalments (EMIs) by cheques or in cash from the customers of M/s. ICICI Ltd and M/s. LIC Housing Finance Corporation Limited. But he has not been able to provide a break-up into recoveries by cheques and recoveries in cash. The benefit of doubt will go to the appellants. In this view of the matter, having not

found favour with the appellants' plea that their activity during the period of dispute was not exigible to tax in the category of Business Auxiliary Service, we direct them to predeposit Rs. 1,00,000/- (Rupees one lakh only) with the lower appellate authority within four weeks from the date of receipt of a certified copy of this order, whereupon that authority will dispose of the appeal before it on merits in accordance with law after giving the appellants an effective opportunity of being heard.

5. Accordingly the impugned order is set aside and the appeal stands allowed by way of remand in the above terms.

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