

Cethar Vessels Pvt. Ltd. Vs. Cce

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

Decided On : Mar-02-2007

Reported in : (2007)10STJ10CESTAT(Chennai)

Judge : K T P.

Appellant : Cethar Vessels Pvt. Ltd.

Respondent : Cce

Judgement :

1. This is an application for stay filed by M/s. Cethar Vessels Pvt.

Ltd., Trichy. The application seeks stay of operation of the order in appeal No. 71/06 dated 18/09/06. The appellants are registered as a provider of various services including Business Auxiliary Services.

They executed turnkey projects apart from manufacturing and supplying industrial boilers. They had procured certain materials in the course of carrying out turnkey projects of total energy system. They had collected an amount of Rs. 10,94,392/- towards services of transporting the material to the project sites. An amount of Rs. 1,11,628/- towards the said service rendered by the appellant during 10.9.04 to 31.03.05 was demanded from them as per the order of the original authority. He had also demanded interest and imposed penalties under various sections of the Finance Act 1994. The demand was on Rs. 10,94,392/- being the margin received by the appellants in making available certain goods at the sites of the turnkey

projects they had undertaken for their clients. They had undertaken to re-design the entire energy system. It was decided by the lower authorities that the activity of providing material for a value of Rs. 1,82,60,754/- at the project sites, which yielded a margin of Rs. 10,94,392/-, was the taxable service of 'procurement of goods' for their clients covered by Business auxiliary service.

2. It was argued by the Ld. Counsel that the above activity was part of turnkey contracts and that the same did not involve provision of business auxiliary service to their clients. Ld. Counsel reiterated the submissions made before the lower appellate authority that the transaction was based on works contract. The Tribunal had already held that there would be no service in the transaction of the works contract. The materials formed components of the projects. He cited the decision in the case of Daelim Industrial Co. Ltd. v. CCE Vadodara , wherein the Tribunal had made the following It is well settled that a work contract cannot be vivisected and part of it subjected to tax. The impugned orders have proceeded to do precisely that. Therefore, they are required to be set aside.

3. Ld. SDR reiterated the arguments followed by the Commissioner in passing the impugned order.

4. On a careful examination of the records and the submissions made by both sides, I find that the demand of tax was made on the margin obtained by the appellants in procuring goods used by the appellants for the execution of various projects. In view of the ratio in the case of Daelim Industrial Co. Ltd. v. CCE Vadodara (supra), the demand does not prima facie appear to be sustainable. Accordingly there shall be complete waiver of pre-deposit and stay of recovery of the amount involved till the disposal of the appeal.

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