Style Cell Vs. the Commissioner of Central

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT

Decided On : Mar-20-2007

Reported in : (2007)11STJ88CESTAT(Bang.)alore

Judge : S Peeran

Appellant : Style Cell

Respondent : The Commissioner of Central

Judgement :

1. This appeal arise from the Order-in-Appeal No. 173/2005 CE dated 08.09.2005 by which the commissioner (Appeals) has confirmed t he demands in terms of the Order-in-Original No. 49/2004-05(ST) dated 25.08.2004. The appellant were providing service under the category of 'consignment Agent' and had not taken registration certificate and not paid service tax. Hence demand of Rs. 55,834/- was confirmed besides penalty of Rs. 500/- under Section 76 and Rs. 1000/- under Section 77 of finance Act, 1944. They have already paid service tax along with interest. They are challenging the levy of service tax on the ground that their services do not come within the ambit of the definition 'Clearing and forwarding Agent' including the services of 'Consignment Agent'. They contend that they did not warehouse the goods nor received dispatch orders from M/s ITC. They did not maintain any records of receipt and dispatch of the goods and stock available. They maintained their own books of account and they are independent dealer registered under Sales Tax Act. Hence they were not undertaking the transaction of consignment and retaining a part of the price as profit. However their plea has

been rejected by both the authorities. The Commissioner (Appeals) has examined their agreement with M/s ITC which reveals that the appellants were appointed as an agent for sale of principal's product on a commission basis and were obliged to account for and remit sales proceeds to the principal. The goods do consigned to the appellant remained the property of the principal and all unsold stock was duly returned them. The Commissioner (Appeals) has examined the definition of the terms 'Consignment Sale' in terms of Blacks Law Dictionary which defines that it is sale of an owner's property by a third party entrusted to make the sale. Therefore in terms of the definition, he held that definition of C&F agent which includes consignment agent for the purpose of service tax. The Commissioner (Appeals) has also distinguished the citation referred to by the appellants in the case of Mahaveer Generics v. CCE, Bangalore . The Commissioner (Appeals) has relied on the rulings rendered in the case of CCE, Jaipur v. Chopra Brothers wherein in an identical facts and circumstances, the Revenue's appeal was allowed and the similar transaction was said to be coming within the ambit of C&F agent.

3. Despite notice served on the appellants they have not appeared before the Bench. Therefore the matter was heard on merits. The appellants have already deposited the service tax amount along with interest. They are claiming refund on the ground that they were not carrying on activities of 'Clearing and Forwarding' agent and therefore their activates do not fall within the ambit of the definition of 'Consignment agent'. The 'Groups of the Appeal' has been perused by me and I do not find any substance in the appeal for the reason that the commissioner (Appeals) has analysed the matter and has found that the appellant have been receiving the goods from ITC and taking commission for the same. In similar facts and circumstance of the case, the Northern Bench of the Tribunal in the case of CCE, Jaipur v. Chopra Brothers (supra) has held that such transaction comes under the category of clearing and forwarding agent. The commissioner (Appeal) has rightly followed the ratio of the cited Tribunal decision. There is no merit in the appeal and the same is rejected.

4. After the judgment was delivered and when the court was about to rise, Shri Ajit Kumar, Advocate arrived in the court and prayed for recall of the order. He explained that he was held up in the traffic and hence he could not arrive in the

court when the matter was called up. As the judgment has already been delivered, the appellants may move an application for rectification of mistake if any within the period of limitation.