

J.N. Traders Vs. Commissioner of Customs

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

Decided On : Mar-28-2007

Reported in : (2007)10STJ25CESTAT(Chennai)

Judge : P Chacko, K T P.

Appellant : J.N. Traders

Respondent : Commissioner of Customs

Judgement :

1. For the period September, 1999 to March, 2000, the original authority demanded Service Tax of Rs. 52,542/- from the appellants under Section 73 of the Finance Act, 1994 with interest thereon at the rate of 1.5% per month under Section 75 of the Act and imposed penalties on them under Sections 76 and 77 of the Act. This decision of the original authority was upheld by the Commissioner (Appeals), whose order is under challenge in Appeal No. S/01/2002. For the subsequent period (April to September, 2000), the original authority confirmed differential demand of Service Tax to the extent of Rs. 1,96,229/- against the appellants with interest as above and also imposed on them a penalty of Rs. 100/- under Section 76 of the Finance Act, 1994 and this decision was sustained by the Commissioner (Appeals), whose order is under challenge in Appeal No. S/04/2004.

2. After examining the records, we find that the appellants had been rendering "Clearing and Forwarding Service" to clients such as M/s.

Hindustan Lever Ltd. (HLL, for short) and M/s. Ind Exports Ltd. (IEL, for short), in terms of an agreement covering the entire period of dispute. The agreement had inter alia provided for reimbursement, to the C&F Agent by the companies, of expenses incurred towards freight from the place of clearance of goods (except in cases of delivery at godown). The agreement had also enabled the C&F Agent to obtain remuneration for the services rendered by them to the companies. The appellants did not include certain expenses incurred by them on behalf of the companies in connection with the C&F Service rendered to the latter, in the gross value for the purpose of payment of Service Tax for the above periods. Hence show-cause notices were issued to them demanding differential amounts of Service Tax from them for the said periods and proposing penalties on them. It was in adjudication of these show-cause notices that the original authority passed separate orders, which were affirmed by the Commissioner (Appeals) in the impugned orders.

3. After hearing both sides, we find that, in the order passed by the Deputy Commissioner for the period September, 1999 to March, 2000, the charges reimbursed to the appellants by the companies towards freight were held not to form part of the value of taxable services inasmuch as services provided in relation to the carriage of goods by road in goods carriage was found to be exempt from Service Tax. The amount of freight which was excluded from value of taxable service for the said period was to the tune of Rs. 23,84,665/-.

This decision of the original authority was concurred with by the Commissioner (Appeals). Neither of the orders was challenged by the department. Hence, at this point of time, it is not in dispute that the actual expenses of the C&F Agent, reimbursed by the companies, towards freight was not liable to be included in the value of taxable service.

4. However, for the period April-September, 2000, the original authority included similar freight in the value of taxable service and this decision was sustained by the Commissioner (Appeals). It was not open to the authorities to do so, inasmuch as, for the earlier period, they had, on a valid reasoning, excluded freight from the value of taxable service and there was no departmental appeal against the same.

However, in respect of other expenses incurred by the C&F Agent and reimbursed by the companies, the lower authorities, for both the above periods, rightly included the same in the value of taxable service both in terms of the agreement and in terms of Section 67(i) of the Finance Act, 1994 (definition of 'Value of Taxable Service'). We find that all such expenses were incurred by the C&F Agent in connection with rendering of Clearing and Forwarding Service and, therefore, the moneys received as reimbursement from the companies towards such expenses would form part of the value of taxable service.

5. In the result, Appeal No. 2/01/2002 is dismissed and Appeal No.S/04/2004 is allowed to the aforesaid extent and the original authority is directed to re-quantify the amount of differential tax to be paid by the assessee. That authority may also examine afresh the question whether the assessee is required to pay any penalty and, if so, to what extent.

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