S.J. Enterprises Vs. Cce

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SooperKanoon Citation : sooperkanoon.com/45241

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-03-2007

Reported in : (2007)9STJ144CESTATNew(Delhi)

Judge : S Kang, Vice, N T C.N.B.

Appellant : S.J. Enterprises

Respondent : Cce

Judgement :

1. The applicant filed this application for waiver of pre-deposit of service tax. The applicant has already deposited 50% of the amount of confirmed demand. The demand is confirmed by treating the applicant as Cargo Handling Service Provider. The contention of the appellant is that they are only providing labour to the manufacturer and the work of loading and unloading is being done by the manufacturer with their machines. Therefore, the appellants are not providing any service, which attracts service tax. The appellant relied upon the decision in the case of J.J. Enterprises v. CCE Raipur reported in 2006 (3) STR 655 to submit that where the assessee was not owner of the machines which are used for loading and unloading, their role being limited to supply of manpower, they are not rendering cargo handling service and were not liable to tax as such.

2. In view of the decision of Tribunal, the amount already deposited is sufficient for hearing the appeals. The pre-deposit of remaining amount of service tax and penalties are waived for heaving of the appeals. The stay applications are allowed.