

The Commissioner of Central Vs. Orient Cements

The Commissioner of Central Vs. Orient Cements

SooperKanoon Citation : sooperkanoon.com/45434

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT

Decided On : Apr-30-2007

Reported in : (2007)7STR649

Judge : S Peeran, J T T.K.

Appellant : The Commissioner of Central

Respondent : Orient Cements

Judgement :

1. The Revenue has filed this appeal against the Order-in-Appeal No.1/2005 dated 30.6.2005 passed by the Commissioner of Customs & Central Excise (Appeals-I), Hyderabad.

2. The Respondents are the manufacturers of Cement and Clinker both excisable commodity. They filed a refund claim for an amount of Rs. 11,03,392/- paid by them during the period from 17.10.1998 to 30.6.1999 as service users towards the services received by them from the clearing and forwarding agents for the said period. The contention of the Respondents is that there is no tax liability on service users on C & F agents for the period subsequent to 16.10.1998 as per Finance Act, 2003. The Original Authority rejected the refund claim. The Respondents appealed to the Commissioner (Appeals). The Commissioner (Appeals) relying on the decision of the Apex Court in the case of Laghu Udyog Bharati v. U.O.I. held that the Respondents who are users of the service provided by C & F agents are not liable to pay the service tax as the Supreme Court has held that Rule 2 (d) (xii)

and (xvii) of Service Tax Rules, 1994, as amended in 1997, ultra vires the act itself. The Revenue is aggrieved over the impugned order on the following grounds: The Commissioner (Appeals) erred in setting aside the Order-in-Original No. 1/2004 dated 14.01.2004 passed by the Assistant Commissioner of Central Excise solely relying on the Hon'ble Supreme Court's judgment in the case of Laghu Udyog Bharathi v. U.O.I. . The said judgment has been overruled by the same Hon'ble Supreme Court's recent judgment delivered in the case of Gujrat Ambuja Cements Ltd. v. UOI , wherein it is held- The law must be taken as having always been as is now brought about by the Finance Act, 2000. The statutory foundation for the decision in Laghu Udyog Bharathi has been replaced and the decision has thereby ceased to be relevant for the purpose of construing the present provisions (vide Ujagar Prints v. UOI Therefore subject to our decision on the question of the legislative competence of parliament to enact the law, and assuming the amendments in 2003 to be legal for the time being, we reject the submission of the write petitions that by the amendments brought about by Sections 116 and 117 of Finance Act, 2000, the decision in Laghu Udyog Bharathi has been legislatively overruled.

3. Smt Rukmani Menon, learned Advocate appeared for the Respondents and Shri K. Sambhi Reddy, JDR appeared for the Revenue.

4. The learned Counsel brought to our notice that the issue is covered by the decision of the CESTAT's Chennai Bench in the case of Commissioner of C. Excise, Tirunelveli v. DCW Ltd. 2006 (1) STR 298 (Tri. -Chennai) wherein it is held that the service tax liability on recipient of clearing and forwarding service is limited to the period from 16.7.1997 to 16.10.1998 in terms of Section 116 of the Finance Act, 2000. It has further been held that when Section 116 did not enable the Revenue to collect service tax from a recipient for clearing and forwarding service received by him during July - August 1999, the Revenue cannot rely on any of procedural provision under Section 116 to pass on service tax liability on such recipient for any period beyond 16.10.98 appointed by Parliament under Section 116.

5. The learned JDR brought to our notice that the Ministry's clarification F. No. 341/11/98, TRU dated 23.8.1999 according to which the Sub-rules (xii) relating to services provided by clearing and forwarding agent, is to continue as Sub-rule (iii) of Service Tax Rule 1994 (in the amended form vide Notification No. 54/98-ST dated 7.10.1998, which came into effect from 16.10.1998. In these circumstances, he said that the service receiver is liable to pay service tax even after 16.10.1998.

6. The learned Counsel reacted to the above contention of the learned JDR by referring to CESTAT's Chennai Bench decision in Commissioner of Central Excise, Tirunelveli 2007 (6) S.T.R 144 (Tri-Chennai) wherein the Revenue brought to the notice of the Bench that the amendment carried out in the Service Tax Rules, 1994 with effect from 16.10.1998 and the Tribunal held that the amended definition of the assessee in Finance Act, 1994 cannot create tax liability for clearing and forwarding service for the period subsequent to 16.10.98 nor can any amended provision of the Service Tax Rules, 1994 create such liability.

7. We have gone through the records of the case carefully. In the present case, the issue is the refund of the Service Tax paid by the appellants for the period from 17.10.1998 to 30.6.1999. Consequent to the Supreme Court decision in Laghu Bharati Udyog case amendments were carried out in terms of Section 116 of the Finance Act, 2000 making recipient of the clearing and forwarding service liable for payment of Service Tax for the period from 16.7.1997 to 16.10.1998. The Chennai Tribunal in the cited decision supra, has exhaustively dealt with the issue and has held that the Parliament has authorised the collection only up to 16.10.1998 and the Revenue cannot assume authority to collect such tax from the service recipient for any period beyond 16.10.1998. It has also held that Section 117 is procedural and does not in any way alter in substantive provision brought on the statute book by Section 116. Thus in terms of law as interpreted by the CESTAT's Chennai Bench, no service tax liability can be fastened on the recipient of the C & F agent beyond 16.10.1998. Therefore we do not find any merit in the Revenue's appeal. Hence we reject the same.

(Operative portion of the order has been pronounced in the court on completion of hearing)

