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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-01-2007

Judge : N T C.N.B.

Appellant : Amba Polytubes Pvt. Limited

Respondent : Cce

Judgement :
2. The appellant is a Commission Agent. The tax demand is in relation to booking of certain orders. The contention of the appellant was that there was no Service Tax during the period when the service was rendered and the tax being prospective, no demand could arise. It is not in dispute that the commission was received after the levy was imposed.

3. The observations in impugned order about the period of service may be noted.

6. I have gone through the facts of the case the appeal and submissions made by appellant. I find that the moot question involved in the issue is whether the service tax is leviable on the payment of commission received during the months of March, 2005 when the appellant claimed that the work was completed before the introduction of service tax on such commission with effect from 10.07.2004. The appellant has pleaded that the service tax was not applicable on them at the time of procuring the orders and of all the work relating to contracts was completed on 01.07.2004 and debit notes for the commission were issued on 10.07.2004. The adjudicating authority has discussed this matter very elaborately in the impugned

order and I find that the appellant has failed to provide copies of purchase orders procured by them, against which commission was received, details of supply made against the said purchase orders and details of payment realized or remitted by them. I also find that the debit notes were issued on 07.07.2004 and service tax on such commission was exempt upto 09.07.2004 and actual commission was realized during the month of March 2005. Thus it creates malafide intention on the part of the appellant that they raised debit notes on 07.07.2004 shortly before implementation of the Notification No. 8/2004 dated 09.07.2004 just to escape payment of service tax. I also find that the appellant has not provided any corroborative evidence to establish that they had completed the work before introduction of service tax on "Business Auxiliary Services" i.e. on 10.09.2004. I find that receiving the payment is an substantive proof of completion of work during the month of March 2005.

Therefore, I hold that the appellant completed their work during the month of March 2005 and received the payment thereof. I also find the adjudicating authority has rightly confirmed the demand under the proviso to Section 73 of the Finance Act 1994 and invoking penal action under Sections 76, 77 & 78 of the Act ibid. I find that the demand confirmed and penalties imposed are justified. The case laws cited by the appellant are different from the facts and circumstances of the instant case, hence they are not applicable.

4. The finding is that the appellant failed to provide copies of purchase order procured by it so as to establish the period of rendering the service.

5. I am at a loss to understand how this dispute could arise. Facts narrated in the order original make it clear that orders were procured before 09/07/04. I read the relevant portion: I have carefully gone through the entire facts of the case and submissions made by the assessee. I find that the assessee viz. M/s APPL, Kairthal received Commission of Rs. 13,15,057/- from M/s British Electric Manufacturing Co., 31, Ezra Street, Kolkata in the month of March, 2005 against the procurement of the purchase orders dated 24.09.2003. 14.10.2003, 02.07.2004 of M/s Component Engineers, and dated 05.03.2004 of M/s British Electric Manufacturing Co., and realization of payment. I further find that the

Commission was received in the month of March 2005 and the assessee had not deposited the Service Tax on Commission received, which was liable to Service Tax w.e.f. 10.07.2004, under the category of "Business Auxiliary Service", therefore, the assessee were asked by the Jurisdictional Range Superintendent, Central Excise Range-II, Alwar, vide letter dated 20.06.2005 to deposit the Service Tax and also to submit complete details of the Commission received. The assessee vide letter No. APPL/July/05-06 received in the Range Office on 26.07.2005, submitted the copies of debit notes dated 07.07.2004 raised against M/s British Electric Manufacturing Co., 31, Ezra Street, Kolkatta and M/s Component Engineers, 32, Ezra Street, Kolkatta for recovery of Commission of Rs. 8,00,000/- and Rs. 5,15,057/- respectively. The assessee vide their letter dated 13.08.2005 further submitted that the Commission of Rs. 7,58,180/- and 4,88,132/- was received vides DD No. 586351 dtd. 03.03.2005 and DD No. 586361 dtd. 10.03.2005 respectively after deduction of TDS.6. The finding in the impugned order that period of service is not known is contrary to the facts on record. Clearly, service was rendered before the imposition of the levy. Therefore, the demand is not sustainable.

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