Cce Vs. Tcp Ltd.

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SooperKanoon Citation : sooperkanoon.com/45604

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

Decided On : Jun-01-2007

Reported in : (2007)11STJ142CESTAT(Chennai)

Judge : P Chacko

Appellant : Cce

Respondent : Tcp Ltd.

Judgement :

1. This application filed by the Department says that there is an apparent error in Final Order No. 1179 & 1180/2005 dated 1.9.2005 passed by this Bench in Appeal Nos. S/9 & 12/2004 filed by M/s. TCP Ltd. The applicant points out an error in the following statement contained in para 5 of the final order: None of the amendments brought to the Service Tax provisions of the Finance Act, 1994 authorized the Revenue to treat recipients of the above service as assessees for service tax for any period beyond 16.10.1998.

The applicant says that recipients of clearing and forwarding agents' service were liable to pay service tax on such service upto 1.9.99 as held by the apex court in Gujarat Ambuja Cements Ltd. v. Union of India 2005 (182) and therefore it is not correct to say that the Revenue was not authorized to treat the recipients of the above service as assessees for service tax for any period beyond 16.10.1998. Learned SDR reiterated this case of the Department. It is submitted by learned Counsel for the assessee that, in any case, the Revenue cannot recover service tax from them for the period 17.10.98 and 31.8.99 inasmuch as the same was not demanded within the period of 30 days from 12.5.2000, prescribed under Section 117 of the Finance Act, 2000. The show-cause notice in this case was issued on 8.4.2002 only.

2. I have given careful consideration to the submissions. The mistake pointed out by the Revenue has been conceded by learned Counsel while pressing his challenge against the demand of service tax with interest for the above period on another valid ground. Though rectification of the mistake will not affect the final result of Appeal No. S/12/2004, yet, it needs to be done. Accordingly, para 5, barring the first, second and last text will be inserted between the second and last sentences of the said para: This ground is not tenable in view of the apex court's decision in Gujarat Ambuja Cements Ltd. v. Union of India , wherein it was held that there could be no tax liability on users of the services of clearing and forwarding agents beyond 1.9.1999 when by Notification No. 7/99 dated 23.8.99 the levy of service tax on such services was exempted. In other words, users of clearing and forwarding service had liability to pay service tax prior to 1.9.1999. The period of dispute in the present case is 17.10.1998 to 31.8.1999 and therefore the assessee was liable to pay service tax on clearing and forwarding service for this period. However, this tax should have been demanded by the Revenue within 30 days from 12.5.2000 as prescribed under Section 117 of the Finance Act, 2000.

This aspect was noted in para 4 of the final order. The Revenue has not found any mistake in the said para, nor has learned SDR pointed out any. As the relevant show-cause notice was issued only in the year 2002, the demand of tax is beyond the period of limitation prescribed by Parliament.

3. The final order shall be read as amended. The Revenue's application stands allowed to the aforesaid extent.