

Maersk India Pvt. Ltd. Vs. Commissioner of Service Tax

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jun-01-2007

Reported in : (2007)8STR627

Judge : J Balasundaram, Vice, J T T.K.

Appellant : Maersk India Pvt. Ltd.

Respondent : Commissioner of Service Tax

Judgement :

1. In terms of Order-in-Original No. 12/STC/S.J.SINGH/07 dated 15.01.2007 passed by the Commissioner of Service tax, Mumbai, the appellants are required to pre-deposit Service Tax amounting to Rs. 18,55,51,047/- on the gross receipt for services rendered by them during the period from 01.10.2000 to 14.3.2005 excluding the period from 1.3.2003 to 19.11.2003. The interest at the rate of 13% on the Service Tax alleged to have been evaded has been imposed under Section 76 of the Finance Act, 1994. A penalty of Rs. 1,000/- has been imposed under Section 77 of the Finance Act, 1994. A penalty of Rs. 25/- crores has been imposed under Section 78 of the Finance Act, 1994.

2. The appellants have filed an application for stay of the impugned order and waiver of pre-deposit under Section 32 read with Section 86 of the Finance Act, 1994.

3. Shri Rohan Shah, learned Advocate appeared for the appellants and Shri J.B. Mukhopadyay, learned JDR for the Revenue.

4. We have heard both the parties. The appellants have claimed the benefit of the exemption Notification No. 6/99-ST and Notification No.21/2003-ST on the ground that they had received payment for taxable services rendered by them in convertible for foreign exchange during the relevant period. The said notifications exempt Service Tax in case payment is received in India in convertible foreign exchange. There is no dispute that the appellants received the payment for services rendered, in convertible foreign exchange. However, in terms of proviso to the said notification if the payment received in India in convertible foreign exchange for taxable services rendered is repatriated from India there would not be any entitlement for the benefit of notification. The adjudicating authority denied the benefit of exemption notification on the ground that the appellants remitted the dividend to the shareholders outside India in foreign exchange and since the dividend is paid out of net income of the petitioner which is determined after taking into consideration the income from all sources and the payment for service tax also form part of the income of the appellants. The Commissioner had taken a view that the appellants would be covered by the proviso to the notification and therefore would not be entitled for exemption. The learned Advocate argued at length that plain reading of the proviso would indicate only if the entire payment received for the services rendered is repatriated, they would be covered by the proviso and not otherwise. The learned Advocate stated that the appellants derived income from several sources and one of the sources is the amount received as payment for taxable services rendered. In compliance of the various provisions of Companies Act, 1956 and also the Income-tax Act the appellants are required to arrive at the profits for distribution as dividend. They are also bound to declare and

paid the dividend to the shareholders. Just for the reason that one of the sources of their income is derived from the receipt of the payment in convertible foreign exchange received from abroad, it cannot be said that they had repatriated the entire payment received while paying dividend to the shareholders abroad. If such a view is taken it would be impossible for the appellants to avail the benefit of the said notification and a situation would arise that they can avail the benefit of the notification only if they do not include the payment received in foreign exchange for the taxable services in their income.

This will be very much against the provisions of Income-tax Act and the Companies Act. On a very careful consideration of the entire issue, we find that prima facie the appellants have a strong case. A careful reading of the proviso indicates that only if the entire payment for taxable services rendered has been repatriated, the appellants would be covered by the proviso. In the present case, we are of the view that the appellants would not be hit by the mischief of the said proviso.

Hence, we order full waiver of pre-deposit of Service Tax demanded, penalties and interest. There shall be no recovery till the disposal of the appeal.

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