Bwl Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-11-2007

Reported in : (2008)9STR568

Judge : P Das

Appellant : Bwl Ltd.

Respondent : Commissioner of Central Excise

Judgement :

2. The learned advocate on behalf of the appellant submits that the Commissioner (Appeals) dismissed the appeal for non-compliance of the stay order. He submits that the Commissioner (Appeals) while deciding the stay order has totally ignored the relevant facts of the case. It is his contention that in this case, the freight element was borne by the appellant up to the destination. Such destination of buyer factory gate or buyer premises could be place of removal. He also states that the Commissioner (Appeals) erroneously proceeded on the basis of the place of removal as factory gate.

3. The learned D.R. submits that prima facie the case is well covered by the decision of the Tribunal in the case of Gujarat Ambuja Cement v.CCE, Ludhiana 2007 (6) S.T.R. 249 (Tri.) : 2007 (212) E.L.T. 410 (Tri.-Del.).

4. After hearing both sides and on perusal of the record, I find that the issue involved falls in a narrow compass and, therefore, I decide the appeal after

granting stay. It is seen from the impugned order that the Commissioner (Appeals) on the basis that the appellant paid service tax on transport charges for transporting of goods beyond the factory gate. No doubt, this issue is against the assessee as decided by the Tribunal in the case of Gujarat Ambuja Cement Ltd. But the learned advocate disputed the facts of the case in as much as it is his submission that in this case, the place of removal is buyer's premises which was not considered by the lower authorities. As such, I set aside the impugned order and remand the matter to the Commissioner (Appeals) to decide it afresh the stay application after considering the facts and law as settled by the Tribunal.