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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-19-2007

Reported in : (2008)12STJ208CESTATNew(Delhi)

Judge : S Kang, Vice, J T T.K.

Appellant : Singh Transporters

Respondent : Cce

Judgement :

1. The applicant filed this application for waiver of duty and penalties. The demand was confirmed by treating the applicant as Cargo Handling Agent. The contention of applicant is that the applicant is a mining contractor with SAIL and the contract is for breaking of oversize Dolomite, thereafter dolomite is to be crushed by the appellant and thereafter the same is to be supplied to Bhilai Steel plant. The contention is that the contractor entered with the SAIL as mining contract. The transportation of Dolomite is incidental. The applicant also submittedn that the scope of cargo handling service is limited to the cargo only. As per the dictionary meaning, cargo means goods taken on abroad, vessel, aircraft etc. As per new Webster Dictionary, Cargo means goods and Merchandise taken on abroad, vessel, aircraft etc. The contention is that the dictionary meaning of cargo is to carry luggage in ship, vessel or aircraft. The applicant also relied upon the decision of Hon'ble High Court of Rajasthan in the case of S.B. Construction Company v. Union of India 2006 (4) STR 545 (Raj) where the handling of coal from railway wagons to the site of thermal power station with the aid of wagon

tippling system, held to be not covered under cargo handling service. The appellant also relied upon the Board Circular No. 11/1/2002 dated 1.8.2002 whereby it is clarified that cargo handling services means service provided by cargo handling agencies who undertake the activity of packing, unpacking, loading and unloading of goods meant to be transported by any means of transportation namely truck, rail, ship or aircraft. Well known examples of cargo handling service are services provided in relation to cargo handling by the Container Corporation of India, Airport Authority of India, Inland Container Depot. The contention is also that w.e.f.

17.7.07 the appellants are registered with the revenue as provider of mining service and mining service are covered under service tax w.e.f.

1.6.07.

2. The contention of revenue is that the applicant are only cargo handling agent. The revenue also relied upon circular where it has been mentioned that in case transportation and cargo handling service is provided in composite manner, the service tax will be on the gross amount received by the cargo handling agency from the customer. The revenue also relied in the case of JK transport v. CCE Raipur-II 2006 (2) STR 3 to submit that in similar situation, the assessee was held to be undertaking cargo handling service.

3. We find that the applicant is a mining contractor. The SAIL had floated a tender for acquiring service of mining contractor for breaking large size dolomite to smaller sizes by way of crushing, thereafter also for grading into different sizes for transportation to the plant. That w.e.f. 1.6.07, mining services were also included in the scope of service tax and the appellants were duly registered as provider of mining service with the revenue. The revenue relied on the JK Transport case. The facts are different in that case as there was no mining. It is only regarding transportation of goods.

4. In view of the Board circular whereby scope of service is defined, the appellants have a strong case in their favour. Therefore, pre-deposit of service tax and penalties are waived and recovery stayed till disposal of the appeal. The stay

petition is allowed.