Dalveer Singh Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-23-2007

Reported in : (2008)9STR569

Judge : R Abichandani

Appellant : Dalveer Singh

Respondent : Commissioner of Central Excise

Judgement :

1. The appellant has challenged the order of the Commissioner (Appeals) upholding the order-in-original by which demand of service tax amounting to Rs. 4,27,322/- for providing cargo handling and warehousing services was confirmed and a penalty of the like amount was imposed besides imposing other penalties and ordering interest to be recovered.

2. The learned authorized representative for the appellant has contended that, cargo handling and goods transport services were distinct services. He pointed out from the record that, though a certificate dated 25-11-2005 was produced showing that the recipient of transport service had paid up the service tax from the date of applicability of service tax provisions to the recipient, the Appellate Commissioner has not considered the said contention. It was also pointed out that, for the period from April 2004 to March 2005 service tax on handling charges was payable by the applicant and that such an amount of Rs. 26,630/- has been paid up. It was also stated that, a pre-deposit of Rs. 1,00,000/-was already made before the

Commissioner (Appeals) for hearing of that appeal, as recorded in paragraph 4 of the impugned order.

3. It does appear that the appellant had deposited Rs. 1,00,000/- on 20-6-2006 by way of pre-deposit for hearing of the appeal before the Commissioner (Appeals), as recorded in paragraph 4 of the impugned order. It also appears that, the Commissioner (Appeals) has not taken into consideration the contention about the liability of the recipient to pay taxable services of transporting the goods.

3.1 Prima facie, it appears from the certificate issued by Chambal Fertilizers and Chemicals Ltd. on 25-11-2005 that they had paid service tax on freight paid by them. M/s. Rajasthan Transport Company, which is the sole proprietary concern of Dalveer Singh has filed the present appeal. Therefore, having regard to the facts and circumstances of the case, it is directed that the amount of Rs. 1,00,000/-, which has been deposited during the pendency of the appeal before the Commissioner (Appeals) will be treated as a pre-deposit for the purpose of the present appeal and there shall be waiver of pre-deposit of the remaining amount of service tax and penalty payable under the impugned order by the applicant during the pendency of this appeal. The appeal will (sic)(come) up for final hearing in its due course. This application is disposed of accordingly.