Prabhat Financial Services Ltd. Vs. Cce

Prabhat Financial Services Ltd. Vs. Cce

SooperKanoon Citation : sooperkanoon.com/46171

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-14-2007

Reported in : (2008)12STJ54CESTATNew(Delhi)

Judge : S Kang, Vice

Appellant : Prabhat Financial Services Ltd.

Respondent : Cce

Judgement :

1. Heard both sides. The appellants filed this appeal against the adjudication order passed by the Commissioner of Central Excise whereby a demand of service tax amounting to Rs. 21,955/- was confirmed and penalties were imposed. The appellants were providing the service of stock broker.

2. A show cause notice was issued to the appellants raising the demand of service tax of Rs. 52,57,610/- on the ground that the appellants had not paid service tax for providing service of stock broker.

3. The adjudicating authority in the impugned order, dropped the portion of demand which relates prior to 10.9.2004 on the ground that portion of taxable value (brokerage) received at by the sub broker from the customers and which is not received by the stock broker (appellant) and is also exempt from payment of service tax under Notification No.25/2004-ST dated 10.9.2004. The Notification was withdrawn w.e.f.

10.9.2004 and the definition of stock broker was amended to the effect that stock broker means a person who has either made an application for registration or registered as sub broker, as the case may be in accordance with the Rules made under the Securities and Exchange Board of India Act, 1992. The demand was confirmed for the period 10.9.2004 to 30.9.2004 on the assessee on the ground that there is no evidence regarding depositing of service tax of the portion of taxable value charged by sub broker.

4. The contention of the appellant is that it is not disputed by the revenue and the same has also been verified from the record that appellants are only receiving .04% of the 1% brokerage charged by sub broker from the customer. The appellant relied upon the finding of the adjudicating authority in para 10 of the impugned order whereby this fact has been verified. The contention is that portion of service, which has been provided by sub broker, and the sub broker is already liable to pay service tax on the service provided w.ef. 10.9.2004, the same cannot be confirmed against the assessee who is a stock broker.

Hence the demand is not sustainable.

5. The contention of revenue is that in the impugned order, there is a specific finding that evidence regarding discharge of service tax on the portion of the taxable value charged by sub broker during the period in dispute, has not been produced by the appellants. Hence the demand was rightly made.

6. I find that the demand was confirmed in respect of the portion of taxable value of taxable service charged by the sub broker during the period 10.9.2004 to 30.9.2004 from the appellants who is a stock broker. With effect from 10.9.2004, the sub brokers were also liable to pay service tax as they were specifically included in the definition of stock brokers. Major portion of the demand is dropped by the Commissioner of Central Excise on the ground that service has been provided by the sub broker and the same was exempt under Notification No. 25/2004. In this factual position, the demand of serviced tax from the appellants who is a stock broker is not sustainable in respect of the taxable service provided by the sub broker during the period in dispute. Hence the impugned order is set aside and the appeal is allowed.