

Aanex Services Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-18-2007

Reported in : (2008)12STT281

Judge : S T T.V., P Das

Appellant : Aanex Services

Respondent : Cce

Judgement :

1. Applicant is challenging the order of the Commissioner (Appeals), Chandigarh dated 3.7.2007.

2. In this case, the appellant has availed service tax credit of Rs. 13,51,976/- on the basis of photo copy of receipt issued by the Indian Airlines Limited in favour of them. The said receipt did not contain address of the person receiving the said service, description, classification and value of taxable service, registration number of service provider. Adjudication Authority disallowed credit based on the observation that the appellant's claim of Cenvat Credit was not as per Cenvat Credit Rules, 2004. A show cause notice was issued to them indicating that the appellant took credit on the basis of the photo copy of the documents which were not in their name and not a prescribed document. Adjudicating Authority found that the document produced by the appellant was not specified eligible document under Sub-rule (1) of Rule 9 of the Cenvat Credit Rules, 2004 for availment of Cenvat credit.

It was also held that the case was not covered for scrutiny under Sub-rule (2) of Rule 9. The Adjudicating Authority finding that the appellant had deliberately suppressed this fact from department for the purpose of evading service tax also imposed penalty under the Rules apart from recovering of Cenvat credit of Rs. 13,51,976/- along with interest. When the matter went before the Commissioner (Appeals), learned Commissioner vide his stay order dated 21.5.2007 found prima-facie that the appellant's case had no strong merit and that the appellant could not succeed in establishing the balance of convenience in their favour besides finding no proof of their financial hardship for waiver of pre-deposit under Rule 35F. He thus directed the appellant to deposit Rs. 6 lacs towards service tax and Rs. 3 lacs towards penalty as pre-deposit for the purpose of hearing their appeal.

3. According to the learned Counsel for the applicant, modification application filed by them before the learned Commissioner (Appeals) was not considered by him in a proper perspective while passing the impugned Order-in-appeal dated 3.7.2007. According to the learned Counsel for the appellant, in the modification application, they had relied upon the Tribunal's order in Jay Pee Bela Cement v. CCE Raipur in which the Tribunal had allowed the stay application unconditionally as the appellate authority below did not decide the case on merits and the case was remanded without pre-deposit's requirement.

4. Learned Departmental Representative submits that photo copy of the letter dated 26.6.2003 from Indian Airlines Limited does not bear the name of the appellant nor his address etc. Further, no description of the service rendered by the service provider is mentioned. No value of taxable service is available. On the other hand, learned Counsel for the appellant relies upon computer generated receipt dated 6.4.2005 issued by the Indian Airlines; Limited signed by the cashier of Indian Airlines Limited for a sum of Rs. 1,43,515/- with cheque No. 826037 of drawee Bank of Punjab dated 1.4.2005 for the said amount and makes an attempt to correlate with the statement issued by Bank of Punjab dated 13.3.2006 and also another document signed by the Deputy Manager (Finance) of Indian Airlines Limited certifying that the relevant payment was received by them on account of service tax in respect of City Specific Direct Shipper Scheme during the period

from 1.12.2004 to 31.12.2005. In this context, the learned Departmental Representative heavily relies upon Rule 4A of the Service Tax Rules, 1994 which states: " every person providing taxable service shall not later than fourteen days from the date of completion of such taxable service or receipt of any payment towards the value of such taxable service, whichever is earlier, issue an invoice, a bill or, as the case may be, a challan signed by such person or a person authorized by him in respect of such taxable service provided or to be provided and such invoice, bill or, as the case may be, challan shall be serially numbered and shall contain the name, address and the registration number of such person, the name and address of the person receiving taxable service, description, classification, and value of taxable service provided or to be provided and the service tax payable thereon." He also relies upon Rule 9(1)(f) of the Cenvat Credit Rules, 2004. According to him, the document produced does not contain all the relevant information and hence, they cannot be treated as valid documents.

5. Having heard both sides and perused the record, prima-facie, we find that the learned Commissioner (Appeals) while passing this Order-in-appeal dated 21.5.2007 had directed the appellant to deposit Rs. 6 lacs towards service tax and Rs. 3 lacs towards penalty so that the appeal could be heard by him. The said order of the Commissioner (Appeals) reads as under: I have gone through the case records very carefully. On the basis of preliminary scrutiny of the case records and on the basis of due consideration of the merit of the case, it has been observed that prima-facie the Appellant's case has no strong merits and the appellants could not succeed in establishing the balance of convenience in their favour. Also no proof of financial hardship has been submitted by them. In view of the above, I waive the condition of pre-deposit under Section 35F, with direction to deposit Rs. 6,00,000/- (Rs. Six Lakhs) towards Service Tax and Rs. 3,00,000/- (Rs. Three lakhs) towards penalty. The appellant; will file evidence regarding fulfillment of this condition within fifteen days of the receipt of this order failing which their appeal will be dismissed without any further reference to them.

6. From language of the stay order, it is clear that for the purpose of hearing appeal, the appellant was required to deposit total sum of Rs. 9 lacs as pre-deposit under Section 35F and that failure to do so will automatically result in

dismissal of the appeal. In spite of this order, the appellant sought to file modification application again before the Commissioner (Appeals), containing 17 paragraphs of facts and interpretation with the final prayer that Commissioner (Appeals) may modify the order already passed by the Commissioner (Appeals) on 18.5.2007 waiving requirement of pre-deposit and taking up final hearing of the appeal. It appears that the order dated 18.5.2007 itself had attained finality by way it has been referred to above. It appears that in view of non-deposit of the amount required to be deposited, the application for modification has been rejected by the Commissioner (Appeals). We, therefore, do not find any inadequacy in the impugned order passed by the Commissioner (Appeals). We, therefore, direct the applicant to deposit Rs. 6,00,000/- (Rs. Six lacs) towards service tax and Rs. 3,00,000/- (Rs. Three lacs) towards penalty within 8 weeks from today for the purpose of hearing this appeal failing which the appeal shall stand dismissed. On depositing the aforesaid amount, the remaining amount of duty and penalty imposed under the impugned order shall stand waived. Matter is adjourned to 26.11.2007.

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