Pasupati Spinning and Weaving Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-15-2007

Reported in : (2008)12STJ344CESTATNew(Delhi)

Judge : S Kang, Vice, S T T.V.

Appellant : Pasupati Spinning and Weaving

Respondent : Cce

Judgement :

2. The applicant filed this application for waiver of pre-deposit of amount of Service Tax and penalty. The demand of Rs. 3,52,738/- was confirmed on the ground that the applicant received the service of commission agent which is outside India for the period 9.7.2004 to 31.5.2005.

3. The contention of the applicant is that the Commissioner (Appeals) in the impugned order had not considered all the issues raised in their appeal. The contention is that the applicant raised the issue of jurisdiction on the ground that the demand is confirmed against the factory and commission has been paid by their head office. The applicant also submitted that demand is time-barred as no suppression can be alleged against the applicant. The contention is that in the show-cause notice a demand prior to 30.6.03 is on the ground that the applicant received the service of C & F agent and after 30.6.03, the same activity is considered as recipient of business auxiliary service.

4. The contention of the Revenue is that the services are received in respect of manufacture of goods, therefore, the notice was rightly issued at the factory address. The contention of the Revenue is also that the adjudicating authority dropped the proceedings where the demand is made in the show-cause notice prior to 31.6.03. The demand is only confirmed as recipient of business auxiliary service after 30.6.03. The contention of the Revenue is that the applicant is not disputing the fact that they had received the service from the persons who is residing outside the India. The contention is that as per relevant rules which provides that recipient of service liable to pay Service Tax in relation to any taxable service provided by a person who is a non-resident or is from the outside India, does not have any office in India.

5. The applicant also relied upon the decision of the Tribunal in the case of Ispat Industries Ltd. v. CCE reported in 2007-TIOL-399-CESTAT.We find that facts of that are different from the case of present case.

In that case, the Tribunal held that vide Notification No. 36/2004 with effect from 1.2.2005, the service recipient in India is liable to pay Service Tax. This issue is not in the present case.

6. The applicant also relied upon the decision of the Tribunal in the case of 2007-TIOL-928-CESTAT. We find that the facts of the case are also that as the demand is confirmed in respect of the same activity under two headings. In the present case, there is no such issue. On the other hand, Revenue relied upon the stay order dated 29.5.07 to submit that in similar situation, the Tribunal directed the applicant to make deposit of Service Tax.

6.1. We have gone through the facts of the case. We find that there is no dispute that the applicant received the service of a commission agent which is situated outside India. The scope of the definition of business auxiliary service also include commission agent. The issue of jurisdiction and limitation is mixed question of law and facts which will gone into at the time of hearing of the appeal. In these circumstances, we find it is not a fit case for total waiver of amount of Service Tax. The applicants are directed to deposit 50% of the amount confirmed within a period of eight weeks. On deposit of the above-mentioned amount, the pre-deposit of remaining amount of Service Tax and penalty is waived. Adjourned to 23.1.2008 for reporting compliance.