

Daurala Organics Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-26-2007

Reported in : (2008)12STJ327CESTATNew(Delhi)

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

Appellant : Daurala Organics

Respondent : Cce

Judgement :

1. The applicant filed this application for waiver of pre-deposit of amount of Service Tax of Rs. 9,79,641/- and penalty of the equal amount. The Service Tax was demanded on the ground that applicant has provided the service as management consultant.

1.1 The contention of the applicant is that they had not provided any service as management consultant. Only some of their employees were on deputation with their sister concern to perform the day-to-day duty and they were recovering the actual salary and other allowances. The applicant relied upon the decision of the Tribunal in the case of Mahindra and Mahindra Ltd. v. CCE reported in 2006 (2) STR 212. The contention is that the Tribunal the case where the persons were on deputation with other units and deputation amount is only recovered from the sister concern granted waiver of pre-deposit of Service Tax.

The contention of the Revenue is that in the case of Glaxo Smithkline Pharmaceuticals Ltd. v. CCE reported in 2006 (3) STR 711 held that in a similar situation, the Tribunal held that the assessee has provided service as business auxiliary service and not management consultancy service.

2. We find that in this case the Revenue is of the opinion that the applicant is providing the service as management consultant. We find only certain employees were on deputation with the sister concern. In these circumstances, and in view of the stay order passed in the case of Mahindra & Mahindra (supra), prima facie, the applicant had a strong case in their favour. The pre-deposit of amount of Service Tax and penalty is waived. Stay petition is allowed.

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