

Commissioner of Central Excise Vs. Diamond Cements

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-18-2007

Reported in : (2008)12STJ391CESTATNew(Delhi)

Judge : J Balasundaram, Vice-

Appellant : Commissioner of Central Excise

Respondent : Diamond Cements

Judgement :

1. I have heard both the sides on the appeal of the Revenue against extension of credit of Rs. 50,542/- in respect of security services which had been disallowed by the adjudicating authority on those bills which did not provide specific name and address and reduction in penalty in terms of Rule 15 of the Cenvat Credit Rules.

2. The objection of the Revenue to credit being extended to security services is on the basis that the Commissioner (Appeals) allowed the credit on the strength of the certificate produced by the respondents from the service provider M/s. Pink City Security Service to the effect that they had provided service to the respondents and that the said certificate was a new evidence brought for the first time before the Commissioner (Appeals) and he has erred in relying on it in view of the provisions of Rule 5(1) of the Central Excise Rules, 2001, which clearly prohibit production of additional evidence before the Commissioner (Appeals).

3. However, I find that disallowing the credit on security services was on the ground that some of the services had been provided at the residence and such amount disallowed was paid by the respondents and even the adjudicating authority had disallowed the credit of Rs. 50,541/- on the ground that the bills issued by M/s. Pink City Security Service do not bear any specific name and address, and it is for this reason that the respondents produced the certificate before the Commissioner (Appeals) to establish that the services had been rendered by the service provider to them. Therefore, no fault can be found on the reliance placed by the Commissioner (Appeals) on the certificate produced before him in this regard. As per penalty, the Revenue placed reliance on the provisions of Rule 15(1) of the Cenvat Credit Rules, 2004 to contend that the penalty could not be less than Rs. 10,000/- as provided thereunder. However, I find that Rule 15(1) is applicable when credit is taken in respect of inputs or capital goods while it is Rule 15(3) which is attracted in the present case as it is this rule, which deals with taking of credit in respect of input services. Rule 15(3) provides that the penalty cannot be in excess of Rs. 10,000/-.

Furthermore, if at all any one would have been aggrieved that the penalty had exceeded Rs. 10,000/-, it would be assessee and not the Revenue. Since the provisions of Rule 15(1) are not applicable to the facts of the present case, there is no warrant to interfere with the reduction in penalty. I, therefore, uphold the impugned order and reject the appeal.

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