

Bas Engineering Pvt. Ltd. Vs. Cst

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-22-2008

Reported in : (2008)13STJ47CESTATNew(Delhi)

Judge : S Jha, J T T.K.

Appellant : Bas Engineering Pvt. Ltd.

Respondent : Cst

Judgement :

2. Learned Advocate stated that in respect of the authorized dealers service there is no dispute. The appellants were actually discharging the service tax liability. In respect of the second category namely business auxiliary service, the facts are that the appellants received commissions from the financier in respect of the cars financed by them.

The appellants were not aware of the clear legal position, but once they know that this service is taxable under the category of business auxiliary service w.e.f. 1st July 2003 they on their own on two occasions namely 30th November 2004 and 2nd March 2005 discharged the entire service tax liability of Rs. 79,67,976/-. After a gap of seventeen months, the department issued a show cause notice for demanding the service tax and imposed penalties under various sections of the Finance Act. In the first show cause notice Section 78 was not at all invoked. However, after 31/2 months, a corrigendum was issued invoking Section 78 also. The adjudicating authority imposed the following penalties which are required to

be pre-deposited.

(ii) Under Section 77 - Rs. 1000/- for non filing of return and Rs. 1000/- for not getting registration & 3. Learned Advocate raised several legal contentions and urged that in this case Section 78 cannot be invoked at all because there is no fraud, suppression of facts or collusion on the part of the appellants.

Learned Departmental Representative stated that the appellant discharged the service tax liability only after a very long gap and they were required to pay tax even w.e.f. July 2003, therefore, they cannot escape from the legal consequences.

4. On a careful consideration of the case, we find that the appellants have already discharged the service tax liability even before the issue of show cause notice. Several legal contentions have to be examined carefully at the time of final hearing. Prima-facie the appellants have a strong case in their favour, hence, we are inclined to waive the pre-deposit of the penalties.

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