Commissioner of Customs Vs. Diamond Cement

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-23-2008

Reported in : (2008)10STR183

Judge : S Jha, J T T.K.

Appellant : Commissioner of Customs

Respondent : Diamond Cement

Judgement :

1. This appeal by the Revenue is directed against the order of Commissioner (Appeals), Bhopal dated 27.7.07 allowing refund of the sum of Rs. 18,64,068/- in favour of the respondents M/s. Diamond Cement.

2. The dispute relates to service tax for the period 16.11.97 to 2.6.98. The respondent is a recipient of goods transport service. Levy of service tax on goods transport service has a somewhat chequered history. Suffice it to say for the purpose of this appeal that the levy of service tax on the goods transport service on service providers led to agitation by the transport operators in the aftermath of which the liability was fastened on recipients of the service. The amendment made in this regard, however, was struck down by the Supreme Court in the case of Laghu Udyog Bharati. Later another amendment was made in the year 2000, revalidating the levy with retrospective effect from 16.11.97 which was upheld by the Supreme Court in the case of Gujarat Ambuja Cements Ltd. v. UOI 3. In the meantime, the respondent was served with a show cause notice on 4.9.01 and

finally on 6.9.2002, an order was passed confirming demand of service tax amounting to Rs. 18,64,068/-. After the respondent's request for waiver was disallowed by the Commissioner (Appeals), the said amount was deposited under protest on 25.6.03. The Commissioner (Appeals) finally upheld the demand against which the respondent came to this Tribunal in Appeal No. ST/46/04-NB(A) which was allowed on 21.2.05 and the order was set aside. It may be mentioned here that the Revenue has gone to Supreme Court in appeal against the said order of the Tribunal. The respondents filed application for refund of the amount in the light of the decision of this Tribunal. The Department, on the other hand, issued another show cause notice in the light of decision of the Supreme Court in the case of Gujarat Ambuja Cements Ltd. The Deputy Commissioner vide his order dated 28.1.2006 rejected the claim for refund. By the order impugned in this appeal, the Commissioner (Appeals) set aside the said order and allowed refund to the respondents as mentioned at the outset.

4. After hearing learned DR and learned Counsel of the respondent at length, we are of the view that appeal of the respondents having been allowed by the Tribunal, they became entitled to refund of the amount deposited by them pursuant to the interim order of the Commissioner (Appeals) dated 20.6.03. Learned DR took pains to satisfy us that the show cause notice was in accordance with law as it had been issued in the light of decision of Supreme Court in the case of Gujarat Ambuja Cement. We however, find substance in the submissions of learned Counsel for respondents that inter parte order cannot be nullified by issuing show cause notice and withholding refund of the amount which the respondents had deposited pursuant to the interim order of the Commissioner. As indicated above, the Department challenged the order of this Tribunal dated 21.2.05 and the matter is pending in the Supreme Court, we are of the view that till such time the matter is finally decided by the Supreme Court, in the absence of any interim order to the contrary, the Department has no option but to implement order of this Tribunal dated 21.2.05.

5. In the circumstances, this appeal is dismissed. Needless to clarify that the refund of the amount shall be subject to the final decision of the Supreme Court in the pending appeal.