

Lohia Starlinger Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-25-2008

Reported in : (2008)10STR483

Judge : S Jha, J T T.K.

Appellant : Lohia Starlinger

Respondent : Cce

Judgement :

1. This appeal came up for hearing on the point of stay. The appellant has been asked to pay service tax of Rs. 25,10,324/- and equal amount of penalty under Section 78, besides penalties of Rs. 200/-, Rs. 500/- and Rs. 1000/- under Section 76, Section 75A and Section 76 respectively. The appellant seeks waiver of the requirement of pre-deposit in terms of Section 35F.2. The appellant is engaged in the manufacture and sale of machine and machinery parts for woven Sacks Industry. The goods manufactured and cleared are sold for home consumption by others in India and also exported to buyers abroad. The dispute herein relates to the commission paid to the appellant as commission agents for sales abroad. The moot point for consideration is whether as a recipient the appellant is liable to pay service tax for the period in question i.e. 9.7.2004 to 30.0.2005. The case of the appellant is that prior to the enactment of Section 66A of the Finance Act, 1994, there was no such liability to pay service tax on the recipient of service. The case of the Revenue, on the other hand, is that by virtue of the amendment introduced in Rule 2(1)(d)(iv) in the Service Tax Rules in 2002, the recipient of service

became liable to pay service tax. Reference was made to Section 68(2) of the Finance Act, 1994 and it was submitted that in respect of prescribed taxable service, service tax may be paid by a person other than service provider as the Central Government may prescribe. By the said amendment in the Service Tax Rules, it was submitted that the recipient of taxable services was made liable and therefore, the appellant admittedly being recipient of the taxable service in India, is liable to pay service tax.

3. We are, prima facie, of the view that the said amendment in Rule 2(1)(d)(iv) of the Service Tax Rules did not create any liability. Rule 2 is the definition clause of the Rules. The definition clause cannot be understood as a substantive provision of a statute. In the absence of any substantive provision either in the Act or the Rules, creating tax liability on the recipient, prior to enactment of Section 66A with effect from 18.4.2006, the recipient of the tax was not liable to pay service tax. We are accordingly of the view that the appellant is entitled to full waiver of the tax demanded. We accordingly direct complete waiver of the amounts of serviced tax and penalties till disposal of the appeal.

4. This appeal may be tagged with Service Tax Appeal No. 353 of 2007, for final hearing.

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