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SooperKanoon Citation : sooperkanoon.com/46896

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-28-2008

Reported in : (2008)13STJ20CESTATNew(Delhi)

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

Appellant : Pneumatic Power Tool and Co.

Respondent : Cce

Judgement :

2. The applicant filed these applications for waiver of total Service Tax of Rs. 13,29,877/- and penalties. The demand of Service Tax is confirmed by treating the applicant as provider of cargo handling service.

3. The contention of the applicant is that the applicant is nothing to do with the cargo handling. The contract is for nesting, packeting and bundling of merchant mill products. The another contract is for utilization of merchant products bundles placed on wagons by metal strap at five places and suitably sealing the strap. The contention is that applicant is not doing anything regarding loading or unloading of cargo, therefore, is not covered under the cargo handling service. The contention is also that nesting, packeting of merchant mills is not handling cargo.

4. The contention of the Revenue is that the applicant entered into a contract with the M/s Bhilai Steel in nesting, packeting and bundling of merchant mill product. As per the contract, one of activity is product packaging. The Revenue also

pointed out that as per the scope of cargo handling service packing is also included in that service, therefore, demand is rightly made.

5. We find that as per the cargo handling service means loading or unloading, packing or unpacking of cargo and included cargo handling service provided for safety on the subject containers or any containerized freight but does not include handling of export cargo or passenger bags or mere transportation of goods.

6. We have gone through the contracts between one of the activity undertaken by the applicant is product packaging and applicants were strapping the bundle by steel strap of required size which is also undertake shifting of bundles from stock to the specified place of inspection. The applicant also undertakes opening and spreading of pieces for inspection. The applicant also entered into another contract which is for unitization of merchant products bundles placed on wagons by metal strap. In view of this terms of this contract, prima facie, we find the applicants are providing the service of packing, therefore, it is not a fit case for total waiver of amount of Service Tax. The applicants are directed to deposit 50% of the total demand within a period of eight weeks. On deposit of the above-mentioned amount, the pre-deposit of remaining amount of Service Tax and penalties are waived for hearing of the appeal. Adjourned to 2.4.2008 for compliance.