Pnc Construction Co. Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-04-2008

Judge : S Kang, Vice, K T P.

Appellant : Pnc Construction Co. Ltd.

Respondent : Cce

Judgement :

1. Heard both sides. Applicant filed this application for pre-deposit of amount of Service Tax of Rs. 40,61,513/- (Rs. Forty Lakhs Sixty One Thousand Five Hundred and thirteen) and penalties.

2. The Commissioner (Appeals) directed the applicant to deposit Rs. 15,00,000/- (Rs. Ffifteen lakhs) towards the Service Tax and Rs. 10,00,000/- (Rs. Ten lakhs) towards the penalty for hearing of the appeal. Applicant had not complied with the condition of the stay order. Hence, the appeal is dismissed.

3. The demand was confirmed on the ground that applicant is provided Business Auxiliary Service hence liable for service tax.

4. The contention is that collecting toll on behalf of the National Highway Authority of India hence the applicant is not provided any service on behalf of National Highway Authority to commuters. The applicant relied upon the definition of Business Auxiliary Service as provided under the Finance Act. The contention is that Business Auxiliary is any service in relation to Provision of service on behalf of

client as no services is provided to commuters by the National Highway Authority, therefore, the applicants are not liable to pay any Service Tax as provider/Business Auxiliary Service.

5. We find that the applicants entered into a contract with the National Highway Authority for maintenance and repair of a certain portion of Highway and for this service the commuters to pay toll-tax.

The National Highway Authority also authorized the applicant to collect toll tax on behalf of the National Highway Authority. As, the applicants are providing service to National Highway Authority, in respect of Toll collection, keeping in view, facts and circumstances, it is not a fit case for total waiver of Service tax. Applicants are directed to deposit an amount of Rs. 10,00,000/- (Rs. Ten Lakhs) within a period of eight weeks from today. On deposit of this amount the pre-deposit of remaining amount of Service Tax and Penalties is waived.

6. We find, the Commissioner (Appeals) has dismissed the appeal for non-compliance to the provision under Section 35 of Central Excise Act.

Commissioner (Appeals) has not gone into merits the appeal hence the impugned order is set aside and remanded to Commissioner (Appeals) to decide the appeal on merit on showing the deposit of Rs. 10,00,000/- (Rs. Ten lakhs). The appeal is disposed of by way of remand.