

Cameo Corporation Services Ltd. Vs. Commissioner of Service Tax

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Feb-27-2008

Reported in : (2008)11STR161

Judge : P Chacko, K T P.

Appellant : Cameo Corporation Services Ltd.

Respondent : Commissioner of Service Tax

Judgement :

1. After examining the records and hearing both sides, we are of the view that the appeal itself requires to be finally disposed of at this stage. Accordingly, taking into account the payment of over Rs. 12.5 lakhs already made by the assessee, we grant waiver of predeposit of the balance amount and proceed to deal with the appeal.

2. The appeal is against an order passed by Id. Commissioner (Appeals), who remanded the case for fresh adjudication by the original authority.

The period of dispute in this case is 16.8.2002 to 30.6.2004 in respect of one service and 1.7.2003 to 30.6.2004 in respect of other services.

The relevant show-cause notice had demanded service tax from the assessee in the category of "Banking and other Financial Services" (BOFS, for short) in so far as a part of the gross amount determined in the notice was concerned. The adjudicating authority went beyond the scope of the SCN to reclassify the service

as "Storage and Warehousing Service" and to demand service tax on that basis. This action was rightly set aside by the Commissioner (Appeals), who remanded the case to the lower authority for fresh adjudication. This part of the impugned order cannot be interfered with. The original authority shall adjudicate the issue by keeping itself within the scope of the SCN and in accordance with law after giving the assessee a reasonable opportunity of being heard.

3. The remaining part of the impugned demand is on the gross amount collected by the assessee as consideration for a service which was designated as "Business Auxiliary Service" in the SCN as well as in the orders of the lower authorities. It is the case of the appellants that they were actually functioning as a "Share Transfer Agent"; that "Share Transfer Agent's Service" became taxable for service tax only w.e.f.

1.5.2006 with the insertion of Clause 95(a) under Section 65 of the Finance Act, 1994; that, prior to the said date, they were not liable to pay service tax in respect of the service in any other category. In this connection, Id. counsel has referred to two stay orders of the Bangalore Bench (2007 (8) STR 354 and 2007 (8) STR 371), wherein applications filed by the Revenue for stay of operation of the appellate Commissioner's orders in favour of the assesseees were rejected by the Bangalore Bench taking the prima facie view that there can be no levy of service tax on the service of a 'Share Transfer Agent' prior to 1.5.2006. We have heard Id. SDR also who reiterates the findings of the original authority and the first appellate authority.

4. It has been shown to us that "Share Transfer Agents" registered with Securities and Exchange Board of India (SEBI) were held by the department to be covered under the category of "Business Auxiliary Service" prior to 1.5.2006. It is not in dispute that this service was specifically brought within the net of service tax w.e.f. 1.5.2006. Had it been the intention of the legislative authority to treat it as part of "Business Auxiliary Service" prior to 1.5.2006, that authority would have appropriately amended the definition of "Business Auxiliary Service" simultaneously with the insertion of Clause (95a) under Section 65 of the Finance Act. Any such amendment to the definition of "Business Auxiliary Service" has not

been shown to us. It is the consistent view of this Tribunal, where a new category of service is introduced for levy of service tax without amending the definition of a pre-existing category of service in which a given service answering the requisites of the new service is sought to be included by the Revenue for the prior period, there can be no levy of service tax in respect of the given service in the pre-existing category. This position has been made abundantly clear in umpteen number of decisions of this Bench also. In the result, the demand of duty on the gross amount collected by the assessee as consideration for what the Revenue considers as "Business Auxiliary Service" is set aside.

5. As regards penalty, now that we have held in favour of the assessee in respect of a part of the impugned demand of tax, the original authority, in the remanded proceedings, will have to re-determine penal liability (if any) after hearing the party.

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