

Rkbk Ltd. Vs. Cce

Rkbk Ltd. Vs. Cce

SooperKanoon Citation : sooperkanoon.com/47141

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-24-2008

Judge : S Jha, V T M.

Appellant : Rkbk Ltd.

Respondent : Cce

Judgement :

1. The application for stay which was rejected ex-parte, due to default by the applicant is restored.

3. The applicant is DOLG operator on the basis of agreement entered into between them and IOC and rendering services which is being leviable to service tax as clearing and forwarding service. They are not disputing that they are rendering services as clearing and forwarding agency but are contesting the value adopted. As per the agreement, for the services rendered by the applicant, a consolidated amount of Rs. 760/- per KL/MT is being paid by IOC. The applicant during the relevant period received about Rs. 94 lacs as service charges pursuant to the said agreement and claims about Rs. 78 lacs, as relatable to activities which are not covered by the services as clearing and forwarding agent. In support of the same they produced a Chartered Accountant certificate. The Commissioner in his order in revision has given his findings that the Chartered Accountant certificate is not supported by relevant document evidence. He also got the verification report from the jurisdictional officer on the vouchers submitted by the party in support of their claim. Accordingly, he confirmed a demand of Rs. 5,43,618/- as against the

amount of service tax Rs. 94,272/- admitted by the applicant to be payable. He also imposed penalties under various sections.

4. Learned Advocate appearing for the appellant relied on judgments according to which the reimbursed amounts were permitted to be excluded for the purpose of arriving at the value for service tax.

5. Learned DR submits that the agreement itself does not provide for any separate reimbursement.

6. We have carefully gone through the relevant portions of the agreement and the submissions by both sides. It suffices to say that the issue has to be gone into in detail at the time of final hearing and that the applicant has not made out a prima-facie case for total waiver of service tax demanded. Accordingly, we direct the applicant to deposit a sum of Rs. 2.5 lacs within six weeks from today and report compliance on 12th May 2008. Subject to deposit of the amount as above, we waive the pre-deposit of the balance amount of duty and penalties.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com