

Ramsar Tex Private Ltd. Vs. Cce (St)

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

Decided On : Apr-04-2008

Judge : P Chacko

Appellant : Ramsar Tex Private Ltd.

Respondent : Cce (St)

Judgement :

1. One of the miscellaneous applications is for change of the appellant's name to 'Ramsar Tex Private Ltd.' and the other is for waiver of predeposit and stay of recovery. A copy of 'Fresh Certificate of Incorporation' issued by the Registrar of Companies, Tamilnadu is being produced by counsel and the same indicates change of name of the company to 'Ramsar Tex Private Ltd.' with effect from 25.3.1999. The application is allowed and, accordingly, the name of the party in the Memorandum of Appeal and the stay application stand changed to 'Ramsar Tex Private Ltd.' 2. After examining the records and hearing both sides on the stay application, I note that the issue arising in the appeal stands settled by numerous decisions of the Tribunal based on the Hon'ble Supreme Court's judgment in Commissioner of Central Excise v. L.H. Sugar Factories Pvt. Ltd. 2006 (3) STR 715 (SC). In the circumstances, after dispensing with predeposit, I take up the appeal for final disposal.

3. The appellants had received Goods Transport Operators Service (GTO service, for short) during the period from 16.11.1997 to 1.6.1998 but had not filed service tax returns or paid service tax. A show-cause notice was issued to them on

2.1.2003 demanding service tax for the said period, which was contested by the party. The original authority dropped the demand. But the revisional authority confirmed the demand of tax under Section 84 of the Finance Act, 1994. Hence the present appeal. The question whether, under Section 73 of the Finance Act, 1994, service tax could be demanded from a recipient of GTO service for the aforesaid period was settled in the case of L.H. Sugar Factories (supra), which was followed by this Bench consistently in numerous cases, one of which, cited by the appellant's counsel, is Final Order Nos. 1199 to 1237/2006 dated 1.12.2006. Paragraphs 2 and 3 of the said final order are reproduced below: 2. The respondents in these appeals had received "Goods Transport Operators" service during 16.11.97 to 1.6.98 but had not filed service tax returns or paid tax. SCNs were issued to them by the department on various dates after 12.5.2000, the date on which the Finance Act 2000 came into force. This date is relevant because the relevant provisions of the Finance Act 1994 were amended by the Finance Act 2000 with effect from 16.11.97 to 1.6.98. These provisions were considered by the lower appellate authorities and it was held that the respondents were not liable to pay service tax on the GTO service received by them during the above period as the demand of tax was raised beyond the time limit prescribed under Section 73 of the Finance Act, 1994 as amended. Learned appellate Commissioners relied on the Tribunal's judgment in L.H. Sugar Factories Ltd. v. CCE Meerut II, wherein it had been held that a person receiving taxable service from GTO/C&F Agent was not covered by the provisions of Section 70 & 73 of the Finance Act, 1994 and that any demand notice issued to such a person by the department under Section 73 was not maintainable. The Tribunal had also held that the above legal position did not get altered even after the amendment of the Finance Act, 1994 by the Finance Act, 2003. The Tribunal's decision was upheld by the Supreme Court vide 2005 (187) ELT 5 (SC).

3. In these appeals, it is pointed out that, after the decision in L.H. Sugar Factories case, the Hon'ble Supreme Court has admitted civil appeals filed by CCE Vadadora-I and CCE Chennai-III in the cases of Gujarat Carbon and Industries and Sundaram Fasteners Ltd. respectively and that those civil appeals challenging the view taken in L.H. Sugar Factories case have been admitted by the court.

However, there is no claim that the operation of the orders passed by this Tribunal in the cases of Gujarat Carbon and Industries and Sundaram Fasteners Ltd. was stayed by the apex court. In these appeals, the appellants proceed to discuss the provisions of Sections 70, 71, 71A & 73 of the Finance Act, 1994. It is contended that "both the service provider filing return under Section 70 and the service recipient filing return under Section 71A are to converge necessarily at Section 71 for the purpose of verification".

It is contended that the service recipient, required to file self-assessed tax return under Section 71A, is also covered within the ambit of Section 73(1)(a). Accordingly, the appellants' case is that the subject SCNs were issued within the powers of the department under Section 73(1)(a) of the Finance Act, 1994. Ld. SDR has reiterated this case of the department. Ld.

counsels/consultants, opposing this plea, submit that the above contentions would not stand the test of the ruling given by the apex court in the case of L.H. Sugar Factories (supra). On a perusal of the apex court's judgment in L.H. Sugar Factories case, I find that the above legal proposition made by the appellants is not sustainable inasmuch as their lordships of the apex court rendered their ruling after considering the aforesaid provisions of the Finance Act, 1994 as amended.

4. Following the well-established precedent, I set aside the demand of service tax as well as penalties on the appellants and allow this appeal.

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