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T.P. Textiles (P) Ltd. Vs. Cce

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

Decided On : May-26-2008

Judge : P Chacko, K T P.

Appellant : T.P. Textiles (P) Ltd.

Respondent : Cce

Judgement :

1. After examining the records and hearing both sides, we find that, in this appeal, the appellants are challenging the denial of cash refund of service tax by the lower authorities. During the period of dispute [14.8.97 to 14.8.99] the appellants had paid service tax totalling to Rs. 91,249/- on Clearing and Forwarding Agent's Service. On 4.11.1999, they claimed refund of the amount on the strength of the Hon'ble Supreme Court's judgment in Laghu Udyog Bharathi reported in 1999 (112) ELT 365 (SC). In order to get over the bar of unjust enrichment, they produced the following documents before the original authority along with their reply to the show-cause notice issued by that authority: (i) Certificate from the Clearing & Forwarding Agent for payment of service tax from the appellant's account; (ii) Certificate from Chartered Account for payment of service tax and also to show that the incidence of service tax had not been passed on to any other person; (iii) Xerox copies of balance sheet and profit and loss accounts for the yeas 1997 - 98 and 1998 - 99 and what is called "account copy of service tax paid up to 31.8.1999.

After holding that the Chartered Accountant's certificate is not a valid evidence against unjust enrichment, the original authority denied cash refund on the ground of unjust enrichment, after sanctioning the refund claim on merits. Aggrieved by the Assistant Commissioner's decision, the party preferred appeal to the Commissioner (Appeals), but the latter sustained the decision of the lower authority. Hence the present appeal filed by the party.

2. It is submitted by the learned Counsel for the appellants that the Chartered Accountant's certificate was rejected by the authorities without valid reason. It is submitted that the consignment agent's certificate covering the above period were per se evidence of the fact that appellants had not passed on the incidence of service tax to them.

It is also submitted that the copies of the relevant books of accounts covering the said period were also produced but the same were not examined. Finally, it is submitted that, given an opportunity, the appellants can produce the original books of account (audited) to enable the original authority to re-examine the appellant's claim for cash refund of service tax. The learned JDR submits that the Chartered Accountant's certificate, not supported by the relevant invoices, were only to be rejected. In this connection, he has relied on the Tribunal's decision in Commissioner v. Eltech Enterprises , wherein a Chartered Accountant's certificate, not supported by the relevant sales bills, was held to be not sufficient to show that the burden of duty had not been passed on to any other person. Learned JDR has also referred to the apex Court's judgment in Mafatlal Industries Ltd. v. Union of India 3. After giving careful consideration to the submissions, we are inclined to remand the case to the original authority so that the ends of justice can be met. It appears from the records that both the lower authorities harped at length on the Chartered Accountant's certificate and none cared to examine the relevant books of accounts, perhaps for the reason that the originals were not produced. What appears from the records is that only xerox copies of the books of accounts for the years 1997 - 98 and 1998 - 99 were produced. For the period 1999 - 2000, apparently, what was produced was an unaudited "account copy of service tax paid upto 31.8.99". Now that the learned Counsel, under instructions, undertakes to produce the relevant books of accounts in original before the original authority

to enable that authority to re-examine the case, we are of the view that, for the ends of justice, an opportunity must be made available to the party. Accordingly, we set aside the orders of the lower authorities and allow this appeal by way of remand directing the original authority to pass fresh order on the question of unjust enrichment after giving the party a reasonable opportunity of adducing evidence as also of being personally heard.

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