

B.E. Gelb Consultancy Service Vs. Cce

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

Decided On : Jun-16-2008

Judge : P Chacko

Appellant : B.E. Gelb Consultancy Service

Respondent : Cce

Judgement :

1. The appeal arises for final hearing. It has been filed by M/s. B.E.GELB Consultancy Service, Michigan, U.S.A., represented by M/s. L.G.Balakrishnan & Brothers Ltd., represented by Sri M. Jayaramachandar, Manager (Taxation). It is against an order of the Commissioner (Appeals), whereby an appeal filed by M/s. B.E. GELB Consultancy Service through M/s. L.G. Balakrishnan & Bros Ltd. against an order of the adjudicating authority was rejected on merits but with reduction of penalty. The original authority had demanded service tax of Rs. 5,07,738/- from the appellant under Section 73(a) of the Finance Act, 1994 with interest under Section 75 of the Act and had also imposed penalties on them under Sections 76 and 77 of the Act. Its order was in adjudication of a show-cause notice dt. 24.12.2004, wherein the department had demanded the above tax with interest and had also proposed penalties. The SCN had not specifically alleged that M/s. L.G.Balakrishnan & Brothers Ltd. had been authorized by the US party to pay service tax on their behalf to the Indian authorities on the amount of royalty collected by the latter from the former in terms of FOREIGN TECHNOLOGY TRANSFER AGREEMENT between them. However, in adjudication of the notice,

the original authority found the Indian company liable to pay service tax on behalf of the US party to the Govt. of India for the period Oct'99 to June'02 and, accordingly, confirmed the proposed demand of service tax against the said company and imposed penalties on them. It was that decision which was sustained by the appellate authority (with reduction of penalty).

2. Today, the Id. counsel for the appellant submits that Sri Bruce E. Gelb, who had authorized the Indian company to contest the demand of service tax and proposal to impose penalties, on behalf of M/s. B.E. GELB Consulting Services (USA), is no more. It is submitted that, to the best of her belief, Sri B.E. GELB was running the business as its proprietor and, therefore, with his demise, the appeal has to be treated as having abated in terms of Rule 22 of the CESTAT (Procedure) Rules, 1982. Though the Id. counsel is certain that Sri Bruce E. Gelb is no more, she cannot say for certain whether his business at Michigan was proprietary. The counsel undertakes to take steps to bring on record documentary evidence of the demise of Sri B.E. Gelb as also of the legal status of his erstwhile business concern.

3. At the outset, I note that the name of the US party as given in the aforesaid AGREEMENT is "B.E. GELB Consulting Services" and not "B.E. GELB Consultancy Service". As it is admitted position that M/s. L.G. Balakrishnan & Brothers Ltd. are authorized representatives in India of M/s. B.E. GELB Consulting Services for the purpose of contesting the SCN and connected proceedings, they are directed to produce the Death Certificate pertaining to Sri B.E. GELB and the licence or other document (by whatever name it is called) issued by the governmental authority in the US to Sri Bruce E. Gelb or M/s. B.E. GELB Consulting Services, both the documents having to be duly authenticated by the Indian Embassy in the US. This shall be done within 3 months. Mention on 24.9.2008.

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