Alstom Projects India Ltd. Vs. Cce

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

Decided On : Jul-04-2008

Judge : P Chacko

Appellant : Alstom Projects India Ltd.

Respondent : Cce

Judgement :

1. After examining the records and hearing both sides, I am of the view that the appeal itself requires to be disposed of summarily.

Accordingly, after dispensing with predeposit, I take up the appeal.

2. The appellants are engaged, inter alia, in the manufacture of excisable goods. During the period Jan'05 to March'07, they availed CENVAT credit of the service tax paid on certain input services and utilized the same for payment of service tax on "Goods Transport Agency's Service" (GTA Service, for short) received by them. This credit was to the extent of Rs. 62,812/-. The department issued a show-cause notice to them proposing to recover the above amount with interest as also to impose penalty on them on the ground that input service tax was not available to be utilized for payment of service tax on GTA Service, which was also an 'input service'. The party contested the proposals by submitting that, by virtue of the Explanation to the definition of "output service" given under the CENVAT Credit Rules, 2004, they were entitled to treat GTA Service as an 'output service'.

This plea was repelled and the original authority confirmed the demand of Rs. 62,812/- against the appellants under Section 73 of the Finance Act, 1994 with interest under Section 75 of the Act and imposed on them a penalty equal to tax under Section 76 of the Act. The appeal filed by the party against the decision of the adjudicating authority did not succeed. Hence the present appeal.

3. After considering the arguments of both sides, I have not found good case for the appellants against the demand of service tax of Rs. 62,812/- with interest. This tax with interest has already been paid by the party. However, the present appeal contains certain grounds against the demand. None of these grounds has been found to be sustainable. The appellants are claiming under the aforesaid Explanation, which reads as follows: Explanation:- For the removal of doubts, it is hereby clarified that if a person liable for paying service tax does not provide any taxable service or does not manufacture final products, the service for which he is liable to pay service tax shall be deemed to be the output service.

As the appellants were, admittedly, engaged in the manufacture of goods during the material period, they were not entitled to treat GTA service as an output service in terms of the above Expatriation. In other words, input service tax credit was not available to be utilized for payment of service tax on GTA Service, which was also an input service.

The ld. counsel has pointed out that the above Explanation was deleted by the Central Government by Notification No. 8/06-CE (NT) dt. 19.4.06.

This amendment, however, does not advance the appellants' case any further inasmuch as, with the deletion of the above Explanation, GTA Service remains as an 'input service' only. With reference to the reliance placed by the appellants on the amendment of Rule 2(b) by the Finance Act, 2008, the ld. counsel submits that the appellants do not propose to press this ground.

4. The ld. counsel has also relied on the following decisions of the Tribunal: 1) Commissioner v. Nahar Industrial Enterprises Ltd. 2007 (7) STR 26 (Tri. - Del.)India Cements Ltd. v. Commissioner 2007 (7) STR 569 (Tri.-Chennai)R.R.D. Tex Pvt. Ltd. v. Commissioner 2007 (8) S.T.R 186 (Tri.-Chennai) In the above

cases, the benefit of the Explanation was given to the assessees who satisfied the requirements thereof. The present appellants did not satisfy these requirements. Finally, the ld. counsel has relied on the Board's Circular F. No. 341/18/2004-TRU dt. 17.12.04, wherein issues pertaining to levy of service tax on GTA Service were examined and it was, inter alia, clarified thus: "No penalty should be imposed on such defaulters unless the default is on account of deliberate fraud, collusion, suppression of facts or wilful misstatement or contraventions of the provisions of service tax with intent to evade payment of service tax." Ld. counsel has relied on the above circular in support of the appellants' prayer for vacating the penalty. Here, I have found a valid point. As the department has not alleged fraud, collusion etc. against the appellants, there need not be any penalty on them as per the circular. I suppose, the circular is binding on the other side.

5. In the result, I allow this appeal only to the extent of setting aside the penalty. The impugned order will stand modified to this extent.