In Re: Orissa Chrome Export and

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SooperKanoon Citation : sooperkanoon.com/53654

Court : Authority for Advance Rulings

Decided On : Dec-14-2006

Reported in : (2007)(217)ELT476AAR

Judge : S S Quadri

Appellant : In Re: Orissa Chrome Export and

Judgement :
Appellants: In Re: Orissa Chrome Export and Mining Company Limited Vs.

1. The applicant M/s Orissa Chrome Export and Mining Company Limited, Bhubaneswar, Orissa filed this application under 96C(1) of the Finance Act, 1994 (for short "Service Tax Act") seeking an advance ruling of the Authority on the following questions.

1. Whether the service tax liability can be imposed upon the service availer like us who is engaged in the manufacturing and Exporting and is availing Services like transportation of goods through roads from the transport service provider during the course of our trade and commerce of export.

2. As we are exclusively involved in the 100% export, whether we are entitled for exemption/Waiver/tax holiday from the Service Tax.

3. Is it correct to hold that we are entitled for the benefits of the provisions of Rule 3(1) (iii) of Export of Service Rules, 2005 as transportation services are provided to us in relation to our business or commerce and the ultimate recipient of those

services are located outside India? 4. Is it correct to hold that all the activity, incidental and ancillary, facilitating the export shall also fall within the ambit of export and enjoy the same benefits as are available to the Export? 2. The applicant is carrying on the activity of manufacture and export.

In the application against column No. 6, it is stated that the applicant is an existing exporter. The jurisdictional Commissioner forwarded the comments to the application pointing, inter alia, that the applicant has been issued a show cause notice with reference to the demand of service tax and the matter is pending before Assistant Commissioner/Deputy Commissioner, (Service Tax Adjudication), Bhubaneswar. In view of the position stated above the Authority issued a notice to the applicant on 28-11-2006 to show case why the application should not be rejected for the ground mentioned therein.

The relevant portion of the notice reads thus: 2. The Authority is tentatively of the view that the said application is liable to be rejected on the following two grounds: (i) The question on which the applicant has sought an advance ruling relates to an "on going" activity/service as has been admitted in applicant's letter dated 3-10-2006.

(ii) It has been brought to the notice of the Authority by the concerned Commissioner, Central Excise, Customs & Service Tax, Bhubaneswar-I Commissionerate, Bhubaneswar that the issue raised in Question No. 1 of the application is already pending before the Assistant Commissioner/Deputy Commissioner (Service Tax Adjudication), Bhubaneswar. A copy of the Commissioner's comments alongwith enclosures thereto including Show Cause Notice No. IV(14)20/S.TAX/BBSR-1/2006/9591A dated 17-5-2002 is enclosed herewith.

3. However, before a final decision is taken by the Authority, you are hereby required to show cause as to why the application should not be rejected on the aforementioned grounds. Written submissions, if any, may be filed positively within two weeks from the date of the receipt of this notice.

3. The applicant filed its reply stating in para 4 of the reply that the objects and reasons of advance ruling with respect to a particular provision of the Act and since the relevant provision of the Act have come very recently, the applicant which was in the business has expeditiously approached the Authority to obtain an advance ruling on the subject. Even now it is an ongoing activity. It is stated that the matter which is pending before the Commissioner, Central Excise, Customs & Service Tax, Bhubaneswar is with respect to an assessment and not with respect to substantial question of law and that the subject matter before the Authority is in relation to a substantial question of law. That the matter before the Authority is different from the matter pending before the Commissioner, Central Excise, Customs & Service Tax, Bhubaneswar.

4. Mr. Biswajit Das, Learned Counsel appearing for the applicant submits that no doubt the activity which is being carried on in respect of which advance ruling is sought, is on going activity but the moment this activity was brought within the ambit of the Service Tax Act, the applicant has immediately approached the Authority. Therefore, it cannot be treated as an on going activity for the purposes of the Act.

In reply to a question from the Authority the Learned Counsel submits that after coming into force of the Act this activity was not stopped and still it continues.

5. To appreciate the contention of the Learned Counsel it is necessary to notice the provision of the Section 96A(a) of the Service Tax Act which is in the following terms: Section 96A. Definitions - In this Chapter, unless the context otherwise requires, - (a) "advance ruling" means the determination, by the Authority, of a question of law or fact specified in the application regarding the liability to pay service tax in relation to a service proposed to be provided, by the applicant; 6. The definition of advance ruling, referred to above, makes it abundantly clear that it is concerned with determination of the question of law or fact in relation to service which is proposed to be provided by the applicant. In as much as in this case the activity in respect of which an advance ruling is sought, is not the one which is proposed to be provided but is an ongoing activity, the application is not maintainable. The Authority has taken the same view in case of M/s McDonald's

India Pvt. Ltd., Mumbai - 2006 (3) S.T.R. 245 (A.A.R.) = 2005 (185) E.L.T. 31 (A.A.R.) Order No. AAR/44/103/2003 dated 23-2-2004, M/s Om Construction, jabalpur - 2006 (3) S.T.R. 558 (A.A.R.) Order No. AAR/01 (ST)/2005 dated 6-1-2005 and M/s IJM (India) Infrastructure Limited, New Delhi - Order No. AAR/05(ST)/2006 dated 9-11-2006 [2007 (5) S.T.R. 314 (A.A.R.)].

7. In the view I have taken above, it is not necessary to go into the second ground of rejection for the above reasons.