Emco Ltd. Vs. Commissioner of Central Excise, Mumbai

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jun-08-2010

Judge : The Honourable Mr. D.N. Panda, Member (Judicial) &Amp; the Honourable Mr. S.K. Gaule, Member (Technical)

Appeal No. : APPEAL NO. ST/59/03-Mum & ST/70/04 (Arising out of Order-in-Appeal No.RJB/M-III/204-207/2

Appellant : Emco Ltd.

Respondent : Commissioner of Central Excise, Mumbai

Advocate for Pet/Ap. : Shri J.H.Motwani, advocate for Appellant. Shri K.Lal, SDR for Respondent.

Judgement :

Per : D.N.Panda

ST- 59/03-Mum

The ld.counsel submits that this case was heard alongwith the case of M/s. DGP Windsor India Ltd (Appeal No.ST/37/03/Mum) on 19.7.2004. From the order passed in that case, it is clear that the present appellant's case was also brought out in the said order, as seen from para (1) to para (3) of the same. Relying on the order No.A/593/WZB.2004 dated 19.7.2004, he submits that the present matter should not have been listed for hearing today again.

2. It is very clear from the ld.counsel's submission that the mistake aforesaid is conceivable. But the appellant did not come out with any application for rectification of the mistake duly. We do appreciate that no litigant should suffer for the mistake of the court, but the litigant should have been equally vigilant to redress the wrong before limitation for such redressal expired. . Therefore, we dismiss this submission.

3. The ld.Counsel submits that the activity carried out by the appellant is apparent from page 40 of the appeal folder, which is 'erection and commissioning' of the machinery and the said charges have been paid by his client and that was the subject matter of the adjudication. This consideration was liable to tax in accordance with law which came into force from 1.7.03. But the period involved in the case of the appellant is from July, 1997 to Sept. 2001. Therefore there shall not be taxability. His further submission is that commissioning and installation charges cannot be considered to be forming part of engineering consultancy services which came into force subsequently and clarified by the Board for no computation of both the services under one umbrella. Therefore his pleading on both the counts should succeeded.

4. Ld.DR appearing on behalf of Revenue supports the order of the authority below and also submits that the consideration received for providing services of commissioning and installing was subject matter of adjudication and such a different services was rightly brought under one umbrella for taxation. Therefore, the first appellate authority s order is sustainable.

5. Heard both sides and perused the records. We do not find substance in the argument of the ld.D.R, when page 40 of the appeal folder mentions the activity. We have examined the exigibility of tax in respect of commissioning and installation charges coming out from page 40 of the appeal folder which explained the contract that was entered into between the parties. Taking into consideration the above and also about the effective date of the commissioning and installation charges as 1.7.03, the appeal of the appellant succeeds and we allow the same.

Appeal No.70/04-Mum

Ld.counsel submits that the appellant in this appeal has faced interest on the demand raised in Appeal case No.59/03-Mum. As held by us aforesaid, the demand in that appeal did not sustain. Therefore, no levy of interest in the present appeal arises. Consequently, the appellant in this appeal also succeeds and we allow the same.