
(2012) 12 BOM CK 0108

In the Bombay High Court

Case No : Central Excise Appeal (L) No. 113 of 2012

Almech Enterprise

APPELLANT

Vs

Central Excise and Service Tax

RESPONDENT

Date of Decision : 05-12-2012

Acts Referred:

Citation : (2013) 29 STR 21 : (2013) 38 STT 506

Hon'ble Judges : M.S. Sanklecha, J;J.P. Devadhar, J

Bench : Division Bench

Advocate : D.B. Shroff, with M.P. Baxi and Amogh Karandikar, for the Appellant;
Pradeep S. Jetly with Mrs. Suchitra Kamble, for the Respondent

Judgement

1. This appeal challenges the order dated 17-2-2012 passed by the Customs, Excise, Service Tax Appellate Tribunal ("the Tribunal") and raises the following issue for consideration :

Whether the Tribunal was justified in fact and in law in directing the appellant to pre-deposit a sum of Rs. 1.50 crores out of confirmed demand in the aggregate of Rs. 7.48 crores (Rs. 3.74 crores being duty amount and equivalent penalty) for the purposes of hearing the appellant's appeal on merits?

The appellant is engaged in executing turnkey works contracts for the supply and installation of glass facades, composite cladding etc.

2. On 10-9-2004 the appellant registered itself for paying service tax under the Finance Act, 1994 (the Act) under the head Commercial and Industrial Construction services. The appellant also paid service tax under the aforesaid head after claiming the benefit of Notification No. 1/2006-ST. By Finance Act, 2007, the Act was amended and a new head of service namely Works Contract Services was brought into statute with effect from 1-6-2007. Consequent to the above amendment, the appellant registered itself under the aforesaid head and started paying service tax under the Works Contract Services.

3. On 10-5-2010, a demand notice was issued by the Commissioner of Service Tax demanding a sum of Rs. 3.74 crores for the period 2005-06 to 2008-09. The basis of the above notice was that the appellant is not entitled to the benefit of Notification No. 1/2006-ST as the services provided by the appellant is of finishing and completion services under the head Commercial or industrial construction Further the notice had also invoked the extended period of limitation by alleging suppression.

4. The appellant resisted the show cause notice both on merits as well as on limitation. At the hearing before the Commissioner of Service tax the benefit of Notification No. 12/2003-ST was claimed. The appellant also led documentary evidence regarding value of goods and material provided for completion and finishing services in execution of job work However, by an order dated 20-2-2012 the Commissioner of Service Tax confirmed the show cause notice demanding a sum of Rs. 3.74 crores and also demanded an equivalent penalty holding that only evidence of supply of goods was provided and no evidence of sale was led so as to extend the benefit of Notification No. 12/2003-ST.

5. Being aggrieved, the appellant filed an appeal and application for dispensing with pre-deposit of service tax and penalty with the Tribunal. The Tribunal while directing the appellant to pre-deposit an amount of Rs. 1.50 crores holds that the appellant is not entitled to the benefit of Notification No. 12/2003 inasmuch as the appellant has failed to produce any evidence in respect of the goods/material being sold while providing the services.

6. We find that the Tribunal in the impugned order has proceeded on the basis that no evidence with regard to sale of goods and materials used in providing services was led by the appellant. This ignores the evidence led before the Commissioner in adjudication proceedings We find that the evidence of the value of goods supplied was on record and the Tribunal has not taken even a prima facie view on the same. The works contract/job work may not separately provide for sale of the goods but may be a composite amount for doing the work Therefore, the supply value of goods has to be understood in the context of the work contract/job work contract to determine whether it included in it also the sale of goods Besides, it is the contention of the appellant that the demands are barred by limitation as well as the duty amount has been wrongly computed in the show cause notice and if the correct rate for Works Contract Services under the composition scheme at 4% is applied the appellant would be entitled to refund of service tax.

7. In view of the above we set aside the impugned order and remand the matter to the Tribunal to consider afresh the stay application filed by the appellant after hearing the parties All contentions left open. The appeal is disposed of in the above terms with no order as to costs.