

(2016) 01 DEL CK 0144

In the Delhi High Court

Case No : W.P. (C) No. 6787 of 2015 and C.M. No. 12385 of 2015 & Writ Petition (C) No. 6787 of 2015 & CM No. 12385 of 2015

Bharat Hotels Ltd.

APPELLANT

Vs

Commissioner of C. Ex., Cus. and Service Tax

RESPONDENT

Date of Decision : 18-01-2016

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35, Section 35F

Citation : (2016) 332 ELT 577 : (2016) 41 STR 791

Hon'ble Judges : Dr. S. Muralidhar and Vibhu Bakhru, JJ.

Bench : Division Bench

Final Decision : Disposed Off

Judgement

1. Learned counsel for the Respondent sought time to file reply. Considering that notice was issued in this writ petition on 17th July, 2015 [, 2015 (40) S.T.R. 174 (Del.) itself and more than 5 months have elapsed since then, there is no justification in seeking further time to file a reply. This writ petition is directed against the order dated 30th June, 2015 passed by the Customs, Excise and Service Tax Appellate Tribunal ("CESTAT") dismissing the Petitioner's application for waiver of the pre-deposit under Section 35F of the Central Excise Act, 1944 ("Act").

2. The issue involved in the present petition has been succinctly encapsulated in the previous order dated 17th July, 2015 passed by this Court, which reads as under:-

"The learned counsel for the petitioner submits that the service provided by them is "Transportation of Passengers by Air Services". However, the department insists that the service provided by the petitioner falls in the category of "Supply of Tangible Goods for use". He further submits that whether the petitioner is right or the department is right is a matter which has to be decided and is pending adjudication. The fact of the matter is that it is either one of the two services that would apply. The petitioner has remitted an amount of Rs. 1,04,96,924/- as

service tax under the category of "Transportation of Passengers by Air Services".

The Tribunal has refused to give credit to the petitioner for this deposit under the provisions of Section 35 of the Central Excise Act, 1944 on the ground that the tax has been paid for a category different for which the department has raised the demand.

The submission of the learned counsel for the petitioner is that it has to be decided as to which category is the relevant category.

Be that as it may, in either eventuality, respondents ought to give the petitioner credit for the service tax amount of Rs. 1,04,96,924/-. We feel that the petitioner has a prima facie case. As a result, we are issuing notice and directing that the petitioner need not deposit 7.5% in the category of "Supply of Tangible Goods for use" and that its appeal shall not be rejected by the Tribunal on the ground that the petitioner has not deposited the amount in the said category.

The notice is returnable on 18-1-2016."

3. In the absence of any counter affidavit by the Respondent, the Court considers it appropriate to make absolute the order passed by this Court dated 17th July, 2015. The impugned order passed by the CESTAT is, accordingly, modified by directing that the appeal of the Petitioner would be heard without requiring pre-deposit of 7.5% in the category of "Supply of Tangible Goods for use". The Petitioner's appeal now be heard on merits in accordance with law. The petition and the pending application are disposed of in the above terms.