(2014) 06 CESTAT CK 0007

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Appeal No. 2485, 2535 Of 2012

?CCE, Bhopal — APPELLANT

Vs

M/s S.B. Earth Movers Pvt. Ltd. — RESPONDENT

Date of Decision : 13-06-2014

Acts Referred:
Finance Act, 1994 — Section 80

Citation : (2014) 06 CESTAT CK 0007

Hon'ble Judges : G. Raghuram, J;R. K. Singh, Technical Member

Bench : Division Bench

Advocate : Manish Saharan, Suchitra Sharma

Final Decision : Dismissed/Allowed

Judgement

1. This order is being passed in respect of Appeal No. ST/2485/2012-CU(DB) filed by Commissioner of Central Excise & Service Tax, Bhopal

against Order-in-Appeal No. 97/BPL/2012 dated 9.5.2012 in terms of which the penalties imposed vide Order-in-Original No. 22/ADC/ST/STN/2012

dated 31.1.2012 were set aside invoking provisions of Section 80 of Finance Act, 1994 and Appeal No. ST/2535/2012-CU(DB) filed by M/s S.B.

Earthmovers Pvt. Ltd. against the same order-in-appeal which upheld the demand of service tax confirmed in terms of the same Order-in-Original

(No. 22/ADC/ST/STN/2012 dated 31.1.2012).

2. Briefly stated, the Appellantsâ?? were engaged in providing site formation and clearance, excavation, earthmoving and demolition services to M/s

Prism Cement Ltd. (hereinafter referred to as the Appellants). The allegation in the Show Cause Notice essentially is that they had evaded service tax

by not including the value of diesel supplied free of cost by the service recipient to the Appellants in the value of service for discharging service tax liability. It was contended by the Appellant that the issue is settled in their favour in the case of Karamjeet Singh & Co. Ltd. Vs. CCE, Raipur - 2013

(32) STR 740 (Tri.-Del.).

3. In the Revenueâ??s appeal it is contended that the Commissioner (Appeals) has incorrectly invoked the provisions of Section 80 of Finance Act,

1994 for setting aside the penalty and prayed for restoration of the same.

4. As is evident from the foregoing, the only issue involved in the Appellantsâ?? appeal is whether the value of diesel supplied free of cost by the

service receiver should form part of the gross amount charged by the appellant for providing the said service.

5. The issue of includibility of the value of free supplies in the gross amount charged has been decided by the Larger Bench of CESTAT in the case

of Bhayana Builders (P) Ltd. Vs. Commissioner of Service Tax. Delhi - 2013 (32) STR 49 (Tri.-LB), wherein it has been unambiguously held that the

value of free supplies by the service receiver to the service provider is not includible in the â??gross amount chargedâ?? by the service provider from

the service receiver. In view of this, any further discussion on the issue involved is unnecessary and unwarranted. It is accordingly held that the

demand confirmed on the basis that the value of diesel supplied free of cost by the service receiver is includible in the gross amount charged is

unsustainable. When the demand itself is not sustainable, the question of any penalty simply does not arise.

6. In view of the foregoing, the Appellantsâ?? appeal is allowed and the departmentâ??s appeal is dismissed.