(2014) 08 CESTAT CK 0011

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 151 Of 2009

? CCE, Raipur — APPELLANT

Vs

M/s J.J. Enterprises — RESPONDENT

Date of Decision : 28-08-2014

Acts Referred:
Finance Act, 1994 — Section 70

Citation : (2014) 08 CESTAT CK 0011

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

Bench : Division Bench

Advocate : Sanjay Jain

Final Decision : Dismissed

Judgement

1. Revenue has filed this appeal against the Order-in-Appeal No. 27(ST)/RPR-I/2008 dated 19.9.2008 which set aside the Order-in-Original No. 137-

138/ST/BIL/ADC/2008 dated 27.3.2008.

2. The facts briefly stated as taken from the impugned order are as under:

â??Two Show Cause Notices dated 17.10.2006 and 17.4.2007 were issued alleging, the appellants filed service tax return in respect of cargo handling

service for the period April, 2005 to September, 2005 showing the payment of service tax of Rs.1,33,725/- as well as Educational Cess of Rs.2,675/-.

The appellant had not paid the service tax of Rs.8,96,168/- and Educational Cess Rs.17,923/- received in respect of cargo handling service provided

mechanically valued Rs.89,61,681/-. In respect of the second show cause notice dated 17.4.2007, the allegation was, the appellant had filed service tax

returns for the period of October 2005 to March, 2006 and April, 2006 to September, 2006 showing payment of service tax Rs.1,92,162/- / Education

Cess of Rs.3,843/- and Rs.2,15,317/- service tax Rs.4,308/- Educational Cess respectively. However, the appellants had not paid service tax of

Rs.10,55,317/- and Educational Cess Rs.21,106/- as well as service tax Rs.11,11,800/- and Educational Cess Rs.22,236/- against the cargo handling

services provided mechanically valued at Rs.1,05,53,168/- and Rs.95,47,155/- respectively. It was thus alleged, they had contravened the provisions of

Section 70 of the Finance Act, 1994 by not filing the ST-3 returns in respect of the said amountâ??.

3. The original adjudicating authority vide Order-in-Original No. 137-138/ST/BIL/ADC/2008 dated 27.3.2008 confirmed the aforesaid demands along

with interest but did not impose any penalty. Commissioner (Appeals) vide the impugned order upheld the order-in-original and that is how Revenue is

in appeal before CESTAT.

3. We have considered the facts of the case. It is seen that the case is squarely covered in respondentsâ?? favour by an earlier judgement of this

Tribunal in the respondentsâ?? own case [2006 (3) STR 655 (Tri.-Del.)]. In the said judgement, the Honâ??ble Tribunal held that packing,

unpacking, loading of cement by automatic/mechanised process with role of manpower to oversee and guide the activity would not amount to

rendering cargo handling service. The ld. ARâ??s contention that the department has filed an appeal before High Court against the said CESTAT

order is of little consequence as the said order has neither been stayed nor set aside by higher judicial forum. Therefore, in view of the said judgment

and for the same reasons and on the same grounds as mentioned therein, the Revenueâ??s appeal is dismissed.

