(2009) 09 DEL CK 0248

In the Delhi High Court

Case No : Writ Petition (C) No. 11531 of 2009 and C.M. No''s. 11318-11319 of 2009

Cherry Hill Interiors P. Ltd. APPELLANT

Vs

Commissioner of S.T. RESPONDENT

Date of Decision : 08-09-2009

Acts Referred:

Citation : (2010) 19 STR 334

Hon'ble Judges : Valmiki J Mehta, J;A.K. Sikri, J

Bench : Division Bench

Advocate : Manish Sharma, Rohan Sharma and Vishal Malhotra, for the Appellant; Mukesh Anand and Shailesh Tiwari, for the Respondent

Final Decision : Disposed Off

Judgement

1. Rule D.B.: With the consent of the parties, we have taken up the matter for final disposal at this stage itself.

2. The petitioners herein received show-cause notice dated 31-10-2007 covering the period from June 2005 to March 2007 whereby the respondent demanded service tax, inclusive of cess, amounting to Rs. 5,20,50,735/-. This demand was made on the ground that the petitioners were providing completion of finishing services under the category of commercial or industrial construction services and were accordingly not entitled to exemption under the Notification No. 1/2006-S.T., dated 1-3-2006. This was followed by another show-cause notice dated 8-9-2008 as per which the petitioner No. 1 was asked to show-cause as to why service tax, inclusive of cess, amounting to Rs. 3,56,82,951/- be not demanded from them. The petitioner supplied reply to both the show-cause notices and after hearing the petitioners, the Commissioner, Service Tax, confirmed the demand of service tax, i.e. Rs. 4,65,88,061/- with respect to show-cause notice dated 31-10-2007 and Rs. 3,18,17,104/- with respect to the second show-cause notice.

3. The petitioner No. 1 has preferred two separate appeals against the aforesaid common order dated 2-3-2009 before the CESTAT. Along with these appeals, the petitioners also moved stay application for grant of stay and waiver of pre-deposit of service tax, cess and penalty in both the appeals. In these stay applications, common order dated 17-7-2009 is passed by the CESTAT 2010 (17) S.T.R. 561 . Perusal of this order would reveal that contention of the petitioners was that the nature of contract undertaken by the petitioners is renovation of old buildings wherein huge amount of material/goods is involved and the service element is minimal. According to the petitioners, 80% of the value of work is attributable towards goods and only the remaining 20% of the value of work is liable to service tax as service charge and, therefore, the demand of Rs. 7.80 crores, in both the cases, is without any basis. It was also submitted that the petitioners have been depositing service tax regularly at 33% of the value of the work executable, which would be more than the tax payable. The Tribunal has found some substance in the aforesaid submission of the petitioners, as is clear from the impugned order itself and in view of the observation "A cursory look to scope of work order does not rule out involvement of goods in the contract". However, according to the Tribunal, it can only be examined during the course of final hearing of the appeals as to whether plea of the appellants that under VAT law 80% of the value shall be attributed to goods. Governing by this consideration, direction is given for pre-deposit of Rs. 1 crore.

4. After hearing the Counsel for the parties and taking into consideration the aforesaid aspects, whereby it is an accepted position that substantial value of the work is towards material, and also having regard to the fact that the petitioners have been paying VAT at 33% of the value of work executed (in this manner a sum of Rs. 4,18,33,264/- has already been paid), we are of the opinion that ends of justice would be met if the amount of pre-deposit is reduced from Rs. 1 crore to Rs. 50 lacs. While taking this view, we have also in mind the judgment pronounced by this Bench in Commissioner, VAT, Trade and Taxes Department v. International Travel House Ltd. STA. No. 10/2009 decided on 8-9-2009 pronounced today itself. No doubt, learned Counsel for the respondent has argued that the petitioners are not entitled to abatement of 67% under Notification dated 10-9-2004, as amended vide Notification dated 1-3-2006, because they are providing completion and finishing services exclusively, however, that is a matter which can be looked into by the Tribunal while hearing the appeals finally. The amount of Rs. 50 lacs shall be paid within four weeks. The writ petition is disposed of in the aforesaid terms.

Dasti.

