

(2008) 01 KAR CK 0023
In the Karnataka High Court
Case No : C.E.A. No. 138 of 2007

Commissioner of Service Tax

APPELLANT

Vs

Standard Chartered Bank

RESPONDENT

Date of Decision : 24-01-2008

Acts Referred:

Central Excise Act, 1944 — Section 11 B (2), 12 A

Citation : (2008) 10 STR 6 : (2009) 19 VST 453

Hon'ble Judges : K.L. Manjunath, J;A.S. Bopanna, J

Bench : Division Bench

Advocate : C. Shashikanth, for the Appellant;

Final Decision : Dismissed

Judgement

K.L. Manjunath, J.—This appeal is by the revenue challenging concurrent findings of the Commissioner of Central Excise Appeals, Bangalore, and the order passed by the 2007 (119) ECC 28 raising following substantial questions of law:

(i) Whether refund could be granted without verification of documentary evidences including the documents referred to Section 12A of the Central Excise Act?

(ii) Whether refund would be admissible without examining the applicability of principles of unjust enrichment as laid down under the provisions of Section 11B(2) to Central Excise Act, 1944?

2. We have heard Shri Shashikantha, learned Counsel for the appellant.

3. The respondent is a banking institution. The respondent filed an application for refund of excess Service tax paid on the ground that the Service tax paid by the assessee has not been recovered from its customers. Therefore, it has right to claim for refund. The refund application filed by the assessee has been rejected by the Original Authority on the ground that the assessee has produced only the compact disc to show that the assessee did not recover the amount from its

customers and the compact disc does not reveal the full transaction. Therefore, the application was rejected.

4. Aggrieved by the order of rejection, on a refund claim, the assessee filed an appeal before the Commissioner of Central Excise. The Commissioner of Central Excise (Appeals), after hearing both the parties came to the conclusion that the compact disc produced by the assessee is admissible in evidence and considering the nature of transactions and its voluminous nature, by testing the cases at random, the Commissioner came to the conclusion that the assessee satisfied the genuineness of the claim. Contending that the original authority has committed an error in holding that the compact disc is inadmissible and did not consider a certificate issued by the Chartered Accountant, allowed the appeal of the assessee and set aside the order passed by the original authority.

5. Being aggrieved by the order passed by the Commissioner of Central Excise, the revenue filed an appeal before the Tribunal. The Tribunal after considering the order passed by the original authority as well as the order of Commissioner of Central Excise held that the Commissioner of Central Excise was justified in allowing the appeal as the compact disc produced by the assessee was admissible and the certificate produced by the assessee from its Chartered Accountant would satisfy the claim. Accordingly, the appeal of the revenue has been rejected. Being aggrieved by these two concurrent findings, the present appeal is filed raising the aforesaid two questions.

6. So far as the 1st question is concerned, on facts both the authorities have held that the refund claim made by the assessee satisfy the grounds to allow the refund. Therefore, it is a question of fact and not a question of law. Hence, we have to answer question No. 1 against the revenue.

7. So far as the second question is concerned, such a question was not urged by the revenue before the Tribunal. When such a question was not urged by the revenue before the Tribunal, we are of the opinion that for the first time such a contention cannot be raised by the revenue. Even if it is treated as a pure question of law, even then the revenue has no case on merits since the assessee is asking for refund of the excess service tax paid by it on account that the assessee could not recover the service tax paid by it from its customers. If the assessee was unable to recover the tax from its customers/the assessee cannot be made to pay the service tax in excess and if such refund is asked, we cannot consider the claim of the applicant as unjust and it is a just money which the assessee is entitled since the same was paid by the assessee in excess.

Therefore, we do not see any question of law arises in this appeal. Accordingly this appeal is rejected.