(2015) 11 CESTAT CK 0026

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Stay Application No. 50731 Of 2014, Service Tax Appeal No. 50573 Of 2014

Decorators Pvt. Ltd — APPELLANT

Vs

C.S.T., New Delhi — RESPONDENT

Date of Decision : 30-11-2015

Acts Referred:

Citation : (2015) 11 CESTAT CK 0026

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

Bench : Division Bench

Advocate : S.K. Pahwa, Rohan Pahwa, Amresh Jain

Final Decision : Allowed

Judgement

1. Stay petition along with appeal is filed against order in appeal dated 17/10/2013 which upheld the order in original dated 12/04/2012 in terms of

which service tax demand of Rs.5,17,789/- was confirmed for the period April 2009 to September 2010 under commercial or industrial construction

service (CICS) alongwith interest and penalty.

2. Ld. advocate for the appellant has contended that the appellant has already deposited Rs.1.5 lakhs and that for the similar demand for a different

period in the appellant's own case the CESTAT has allowed its appeal by way of remand and therefore the present case may also be similarly

remanded.

3. Ld. A.R. for Revenue has contended that the service provided by the appellant was in the nature of completion or finishing services and therefore it

was not entitled to the benefit of 67% abatement under the Notification No.s15/2004 - ST or 1/2006 - ST. However he, conceded that the benefit of notification No. 12/2003 - ST can be considered in respect of material supplied in the course of rendering the impugned service provided the appellant

was able to satisfy the conditions of the said notification.

4. We have considered the submissions/contentions of both sides. We find that in the appellant's own case, CESTAT vide final order number

ST/A/53323 - 53324/2015 dated 31/07/2015 in respect of an appeal involving similar demand for different period allowed the appeal by way of remand

in the following terms:

5. In the light of the foregoing, we allow the appeals by way of remanding the case for de nova adjudication to the adjudicating authority

with the direction that the impugned demand may be recomputed after allowing the benefit of Notification No.12/2003-ST provided the

appellant-assessee is to able to demonstrate that it satisfied the conditions of the said Notification for which the appellant-assessee may be

granted an opportunity of being heard. Needless to say that the penalties will also need to be recomputed in the wake of the re-computation

of demand. As the case of the appellasnt-assessee has been disposed of by way of remand, Revenue's appeal also get disposed of because

the penalty aspect will also be recovered in d nova adjudication process. Both the appeals stand disposed of on the above terms.

5. in view of the foregoing and for the reasons contained in the aforesaid order of CESTAT dated 31/07/2015, we waive the requirement of any

further pre-deposit and allow the appeal by way of remand to the primary adjudicating authority for adjudication with the direction that the impugned

demand be recomputed after allowing the benefit of notification No.12/2003 - ST provided the appellant is able to demonstrate that it satisfied the

conditions of the said notification for which the appellant shall be granted an opportuntiy of being heard. Needless to say that the penalty will also need

to be recomputed in the wake of the recomputed demand.

