
(2014) 01 DEL CK 0439

In the Delhi High Court

Case No : CEAC No. 52 of 2013 and C.M. Appl. No. 17451 of 2013

Emirates

APPELLANT

Vs

Commissioner of Central Excise

RESPONDENT

Date of Decision : 28-01-2014

Acts Referred:

Finance Act, 1994 — Section 65(105)(zzn)

Citation : (2015) 37 STR 188

Hon'ble Judges : S. Ravindra Bhat, J; R.V. Easwar, J

Bench : Division Bench

Advocate : Harpreet Singh, Advocates for the Appellant; Harsh Makhija, Proxy for Satish Kumar, Advocates for the Respondent

Judgement

1. The appellant's grievance is that it was assessed to Service Tax and its activities were brought to tax under Section 65(105)(zzn) of the Finance Act, 1994. The goods in question were baggage. The appellant sought to resist the demand arguing that (a) that baggage accompanying the passengers were not goods and (b) in any case, export of baggage was exempted by Notification No. 29/2005-S.T., dated 15-7-2005. It also argued that since the goods transported outside the territory of India in excess of permissible limit constitute export, as they are carried beyond India to overseas destination. The appellant's contentions were rejected and the show cause notice was issued. It appealed unsuccessfully to the Commissioner (Appeals). The appellate order was challenged before the CESTAT on 19-8-2013. In the course of its order dealing with the appellant's application for waiver of pre-deposit, the Tribunal noticed that the appellant had a prima facie case, but directed that it ought to deposit Rs. 24 lakhs with proportionate interest and penalty [2015 (37) S.T.R. 337 (Tri.-Del.)]. The appellant had approached this Court with a writ proceeding which, eventually was permitted to be withdrawn because an appeal to this Court is maintainable. By then the substantive appeal before the CESTAT i.e. STA No. 3592/2012 had been dismissed on account of non-compliance with the order of pre-deposit. Learned counsel argues that the Tribunal fell into error in not

granting full relief. He submitted that in respect of a previous period, on identical grounds a show cause notice had been issued, followed by an adverse order of adjudication, but the Commissioner (Appeals) had accepted the appellant's contention, whose decision was not appealed against by the Customs department. He emphasised that even though this was brought to the notice of the Tribunal it did not properly deal with it and has committed an error on the face of the record. The learned counsel relied on a decision in *Jayaswals Neco Ltd. v. Commissioner of Central Excise, Nagpur*, 2007 (8) S.T.R. 305 (S.C.) : 2006 (195) E.L.T. 142 (S.C.) to say that since an identical aspect is considered by the Court or Tribunal, judicial discipline requires that the same approach is adopted.

2. Learned counsel for the respondent submitted that there is no infirmity in the impugned order and exercise of the discretion in the circumstances of the case does not warrant any interference which is available only if the Tribunal commits a substantial error of law.

3. This Court has considered the submissions. The decision in *Jayaswals Neco Ltd.* (supra) was rendered in the context of a previous decision by an order of the Tribunal accepting a particular contention. The Court held that decisions of coordinate Benches of the same Tribunal as in the present case (the CESTAT) would have to be honoured. In the present case this Court is of the opinion that the appellant is entitled to some relief. The Tribunal has no doubt recorded that the appellant has a prima facie good case but failed to notice that the previous adjudication order, which was set aside in appeal proceedings. Having regard to the conspectus of the circumstances, we are of the opinion that ends of justice would be met if the appellant deposits 25% of the total duty demand as assessed, with proportionate interest, before the Tribunal within 4 weeks from today. Subject to this condition being complied with, the order of the Tribunal dismissing the appeal bearing STA No. 3592/2012 in default of compliance is set-aside. The matter shall be listed before the Tribunal which may proceed to decide the STA No. 3592/2012, to be restored to the file, on merits after giving adequate notice to the parties. The appeal is allowed in the above terms.