
(2023) 07 CESTAT CK 0006

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No. 12826 Of 2014

Modest Infrastructure Limited

APPELLANT

Vs

Commissioner Of Central Excise & ST, Bhavnagar

RESPONDENT

Date of Decision : 05-07-2023

Acts Referred:

Citation : (2023) 07 CESTAT CK 0006

Hon'ble Judges : Ramesh Nair, Member (J); C.L. Mahar, Member (T)

Bench : Division Bench

Advocate : Puloma Dalal, Rajesh K Agarwal

Final Decision : Allowed

Judgement

C.L. Mahar, Member (T)

1. The brief facts of the matter are that the Revenue is of the view that the appellants have shown income under the head "Income Charter Hire" during the Financial Year 2004-05, 2005-06, 2006-07. As per the Income Tax return filed by the appellant, the department is of the view that from the scrutiny of the record of the service tax return, the appellant have not paid service tax on the amount recovered from charter/ hire of ships, tugs and others. Thus, on the first count demand of Rs. 47,46,297/- has been demanded under the head Steamer Agent service. It is also found from the comparison of the income shown by the appellant in their Income Tax returns and in the ST-3 returns. Department is of the view that appellant have misdeclared the value of management, maintenance and repair service and thereby evaded service tax of Rs. 10,09,717/-. Accordingly, a show cause notice dated 05.10.2020 was issued which has been adjudicated by order-in-original dated 15.04.2013 and the charges involved in the show cause notice have been confirmed.

2. Learned Advocate appearing on behalf of the appellant contended that the show cause notice has been issued without jurisdiction as the Mumbai office of the appellant is separately registered with the Mumbai office of Service Tax

authorities. The Mumbai office of the Company has been regularly filing service tax returns for the activities undertaken by the Mumbai office and since the show cause notice covers all the transaction of the Mumbai office and invoices issued at the Mumbai office in the impugned show cause notice, the impugned order-in-original ab-initio without legal jurisdiction and therefore, needs to be set-aside.

2.1 Learned Advocate has also contended that service of charting of ships and tugs does not fall under the category of Steamer Agent service. The demand under Management, Maintenance and Repair service have also been contested by them showing that the value of taxable service has been correctly declared by them as part of the value and the same has also been included in the previous year's turn-over as invoice has been raised in that Financial Year though the income is realized later-on.

2.2 Learned Advocate has also taken us through various documents and we have been presented with invoices issued by their Mumbai office. We have also been shown the registration that the Mumbai office is registered for various services and they have also been filing returns regularly for the services under taken by them.

3. We have also heard the learned Departmental Representative and have also gone in details of the impugned order-in-original.

4. After hearing both the sides and considering the record, we are of the view that the Adjudicating Authority has not dealt with the issue of jurisdiction with regard to the services provided by the appellant's Mumbai office for ships and tugs. Prima-facie the documents which have been produced before us indicate that Mumbai office is separately registered and invoices for charting of ships and tugs have been issued by them. Therefore, the issue of jurisdiction needs to be decided by the Adjudicating Authority afresh.

5. Thus, we remand back the matter for fresh adjudication with the direction that all the documents submitted by the appellant needs to be considered and a fresh order needs to be passed. We also keep all the other issues open i.e. the issue of Management, Maintenance and Repair to be agitated by the appellant before the Adjudicating Authority afresh.

6. In view of above, we set-aside the impugned order-in-original and allow the appeal by way of remand to the Adjudicating Authority for de-novo adjudication.