(2014) 04 CESTAT CK 0001

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Stay Application No. 56201 Of 2013 In Appeal No. 55874 Of 2013

?M/s Jasbhag Tours Pvt. Ltd. APPELLANT

Vs

CCE & ST, Jaipur-I RESPONDENT

Date of Decision : 01-04-2014

Acts Referred:
Central Excise (Appeals) Rules, 2001 — Rule 5

Citation : (2014) 04 CESTAT CK 0001

Hon'ble Judges : Archana Wadhwa, J;Rakesh Kumar, Technical Member

Bench : Division Bench

Advocate : Jatin Mahajan, Govind Dixit

Final Decision : Allowed

Judgement

1. After dispensing with the condition of pre-deposit of service tax of Rs.1,37,159/-, interest and penalties imposed upon the applicant, we proceed to

decide the appeal itself.

2. The appellant is registered as provider rent a cab services and was discharging its service tax accordingly. Based upon the scrutiny of balance

sheet and income tax return, showing more income, Revenue entertained a view that the appellant has suppressed its income generated from rent a

cab service and has thus evaded service tax.

3. In view of the above proceedings were initiated against them culminating into passing of the present impugned orders.

4. It is seen that the appellants have taken a categorical stand before the authorities below that apart from proceeding rent a cab services, the

appellant was also engaged in other businesses, which resulted in emergence of income to them. It is in this scenario that the income reflected in the income tax returns and the balance sheet is much more than the income yielded within running rent a cab service and as reflected however, when the

matter was taken up in appeal before Commissioner (Appeals), the appellant raised an additional legal ground saying that even if the excess income

shown in the balance sheet is presumed to be relate to rent a cab service, they are not liable to pay service tax in respect of the same as they are

running their cab on per k.m. basis in which case they are not covered by the definition of rent a cab.

5. The Commissioner (Appeals), instead of deciding the issues on merits, held that the appellant has raised additional plea before him for the first time

and in terms of Rule 5 of the Central Excise (Appeals) Rules, 2001, an assessee cannot raise the issue for the first time before Commissioner

(Appeals). We find that the short dispute in the appeal relates to the fact as to whether the excess income reflected by the appellant in their balance

sheet or in the income tax returns is relatable to his activity rent a cab or not. The appellant has taken a specific stand that they were making earnings

from other activities also in as much as they are exclusively running the business of rent a cab service. We find that the charges against the appellant

are of clandestine activities, which are required to be proved by the Revenue by production of positive evidences. In as much as in the present case,

we find no evidence adduced by the appellant showing that the excess income was being earned by the party by suppressing the value of rent a cab

services, we prima facie agree with the appellant that they have a strong case. We accordingly, dispense with the condition of pre-deposit of any

amounts.

6. Further, Commissioner (Appeals) has rejected their legal issue of even rent a cab service not being a taxable service on the ground that it has been

raised for the first time before him and his hit by the provision of Rule 5. On going through the said rules, we find that the same relate to production of

evidence for the first time before Commissioner (Appeals) and not to the legal issue. Such legal issues can be raised before the appellate authorities

are required to be decided by him.

7. In view of the above, we set aside the impugned order and remand the matter to Commissioner (Appeals) for decision on merits, after taking the

entire evidence on record as also on the legal issue raised by the appellant. Stay petition as also appeal get disposed of in the above manner.

(Dictated and pronounced in open court)

