
(2014) 07 CESTAT CK 0008

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Stay Application No. 56543 Of 2013, Service Tax Appeal No. 56085 Of 2013

M/s. Sankhla Udyog

APPELLANT

Vs

CCE & ST, Jaipur

RESPONDENT

Date of Decision : 10-07-2014

Acts Referred:

Finance Act, 1994 — Section 80

Citation : (2014) 07 CESTAT CK 0008

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

Bench : Division Bench

Advocate : O.P. Agarwal, Ranjan Khanna

Final Decision : Allowed

Judgement

1. The appellant filed appeal against Order-in-appeal No. 215/RDN/ST/JPR-II/2012 dated 27.12.2012 which partially upheld the Order-in-Original No.

888/ST/2009-10 dated 24.09.2010 passed by the Deputy Commissioner Central Excise Indore in as much as it upheld the demand of Service Tax of

Rs.61,847/- as against Rs.69,360/- confirmed vide the said order-in-Original.

2. Briefly stated the facts of the case are that the appellant having service tax Registration No. AACFS8313CXM003 was engaged in providing

Repairs and Maintenance Services. It was alleged in the Show Cause Notice that there was a difference between amount shown in their ledger

and in the ST-3 returns for the period from Oct., 2004 to March, 2009 on which it did not pay service tax of Rs.258926/- and the same was liable to be

recovered alongwith interest and penalty by invoking the extended period.

3. The appellant contended before the adjudicating authority that prior to 16.06.2005 repair service other than under a maintenance contract was not

liable to service tax and the CESTAT New Delhi vide order No. 2007(5) STR-37 (Tri.-Del.) held that their Transformer Repairing Contract with

RSEB was a repair contract and so the service rendered there-under was not taxable under Finance Act, 1994. Thereafter, the appellant contended,

they became eligible for small scale exemption under Notification 6/2005-ST with effect from 16.06.2005. Further the difference between the figures

shown in the ledger and in the ST-3 returns occurred because in the ledger the figures were shown on accrual basis whereas in ST-3 returns the

figures were shown on actual realization basis and that there had been no suppression or wilful mis-statement on their part.

4. The Id. AR reiterated the contentions contended in the impugned Order-in-Appeal.

5. We have considered the facts and the submissions. In this regard, it is pertinent to quote a para from the Order-in-Original:

“At this stage it is not possible to check each and every entry running into thousand for four years. Moreover the noticee also did not

give list of outstanding payments as on 1.4.2009 which infers that all repairing payments have been received by 1.4.2009. So in want of

complete details, I am of the view that out of service tax liability of Rs.5,51,324/- it paid Rs.4,81,964/- only. So, I pass the following order

after giving benefit of Notification No. 6/2005-ST dated 1.3.2005. Since interpretation of law is involved so I opt section 80 of Finance Act,

1994 and pass the order accordingly.

6. As may be observed, the adjudicating authority has clearly stated that there was interpretation of law involved and he extended the benefit of

Section 80 of Finance Act, 1994 for not imposing any penalty. It clearly shows that the ingredients required for invoking extended period are not

present in this case. Indeed in the entire adjudication order there is no word as to how the extended period is invocable. As such we find that the

extended period is not invocable in this case.

7. It is also seen that the adjudicating authority categorically stated that it was not possible to check each and every entry running into thousands and

then summarily went ahead and confirmed the impugned demand. It is to mention that once the appellant contended that the demand raised was

untenable because the difference between the figures of their ledger and in their

ST-3 return was for the reason mentioned earlier, a clear finding was required to be given by the adjudicating authority instead of brushing it aside on the ground that it was not possible to verify their claim.

8. In view of the forgoing we set aside the impugned order and remand the case to the original adjudicating authority to decide the same afresh after

giving the appellants opportunity for being heard and taking into account their submissions but without invoking the extended period.

[Dictated & Pronounced in the open Court].