(2023) 09 CESTAT CK 0030

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 13727 Of 2014

??Natural Petrochemicals Pvt Ltd APPELLANT

Vs

C.C.E. & S.T.-Rajkot RESPONDENT

Date of Decision : 18-09-2023

Acts Referred:

Citation : (2023) 09 CESTAT CK 0030

Hon'ble Judges : Ramesh Nair, Member (J);Raju, Member (T)

Bench : Division Bench

Advocate : Dhaval K Shah, A K. Mudvel

Final Decision : Dismissed

Judgement

Raju, Member (T)

1. This appeal has been filed by Natural Petrochemicals Pvt. Ltd against demand of Service Tax under the head of Business Auxiliary Service.

2. Learned Counsel for the appellant pointed out that the appellants are inter alia engaged in providing services under the category of Goods Transport Agency and Business Auxiliary Service. During the course of audit, it was noticed that the appellants had received the commission income from M/s Gopal Enterprise and Galaxy Enterprise amounting to Rs. 78,08,192/-and Rs. 5,30,085/- respectively. During the audit, they were asked about the chargeability of Service tax on the said commission received by them under the head of Business Auxiliary Service. Later on show cause notice was issued and demand of service tax was confirmed against the appellant. The impugned order by Commissioner (Appeals) confirmed the demand of service tax and also upheld imposition of penalty under 78. Learned Counsel pointed out that the entire details of the transaction were reported in their financial statement and there was no intention to evade service tax. He argued that, there was no mens rea and therefore extended period of limitation could not have been invoked. He argued that the evidence in the present case was based on the documentary evidence on records including ER-2

return and invoices of the assessee.

2.1 Learned Counsel further argued that the Business Auxiliary Service was first time made taxable w.e.f 01.07.2003, however vide Notification No. 13/2003-ST dated 20.06.2003, the same was exempted up to 09.07.2004. The said income became taxable only w.e.f 09.07.2004.

3. Learned AR relied on the impugned order. He pointed out that the appellant had not disclosed the said income under their monthly returns. He further pointed out that even if the appellant's believed that the said income was exempt, they were still required to declare the same in their monthly returns which they failed to do.

4. We have considered the rival submissions. We find that the appellants are essentially arguing the matter on the issue of limitation. It is noticed that the appellant had not declared the said income in their monthly returns. Even if the appellant believe that the said income was exempted from service tax, they should have declared the same as exempted income. It is noticed that in their pleadings, they have also argued that they have not paid the service tax due to financial Hardship. These facts clearly indicate that the appellant were fully aware about the taxability of the service and deliberately neither paid the tax nor declared the said income in the monthly returns. In these circumstances, we find that the appellant are fully aware of their liability and choose not be paid service tax on account of financial Hardship or otherwise.

5. In these circumstances, we do not find any merit in the appeal filed by the appellant, the same is dismissed.