(2016) 06 CESTAT CK 0007

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 50287 Of 2016

Raghav Construction — APPELLANT

Vs

C.C.E. And S.T.- Jaipur-I — RESPONDENT

Date of Decision : 30-06-2016

Acts Referred:
Finance Act, 1994 — Section 65(105), 78

Citation : (2016) 06 CESTAT CK 0007

Hon'ble Judges : S.K. Mohanty, J

Bench : Single Bench

Advocate : Manmohan Manipal, Sanjay Jain, Rajiv Gupta

Final Decision : Allowed

Judgement

1. This appeal is directed against the impugned order dated 26.11.2015 passed by the Commissioner (Appeals), Central Excise, Jaipur, wherein

Service Tax demand of Rs.38,885/- was confirmed and equal amount of penalty was imposed under Section 78 of the Finance Act 1994 on the

appellant. The reason for confirmation of the service tax demand is that the work of construction of canal and drainage along side the road, is taxable

service under the category of commercial and industrial construction service, in terms of Clause (105) of Section 65 of the Finance Act, 1994.

2. Ld. Consultant appearing for the appellant submits that CBEC vide its Circular No.123/5/2010-TRU dated 24.5.2010 had clarified that laying of

cables under or along side the roads, are not taxable service under Clause (105) of Section 65 of the Finance Act. Thus, the submission of the

Consultant is that the impugned serves are not taxable. He further submits that even if the said services are taxable under commercial or industrial

construction services, the appellant is eligible for abatement, in terms of

Notification No.1/2006-ST dated 1.3.2006.

3. On the other hand, ld. A.R. for Revenue submits that Board Circular is in the context of laying of cables and not related to construction of drainage

along side the road. Thus, according to him, the Circular dated 24.5.2010 is not applicable to the facts of the present case.

4. I have heard both sides and perused records. I find that Circular dated 24.5.2010 has been issued by CBEC clarifying on the aspect of laying down

of cables and not for construction of drainage along side the road. Therefore the benefit of the said circular cannot be claimed in the present case.

However, I find that while confirming the demand, the authorities below have not extended the benefit of abatement under Notification No.1/2006-ST

dated 1.3.2006 to the appellant. Since the said notification is applicable subject to the fulfillment of certain conditions enumerated therein, the eligibility

thereunder has to be examined by the original authority. Thus, I am of the view that the matter should be remanded to the original authority for

necessary verification of the relevant materials to find out whether the appellants are eligible for the benefit under the Notification No.1/2006-ST.

5. I find that there is no element of fraud, collusion or misstatement of fact etc. in the present case, justifying imposition of penalty under Section 78 of

the Finance Act, 1994. Rather, non-payment of service tax is attributable to the bonafide interpretation of the legal provisions, and in such eventuality,

it cannot be said that non-payment of service tax was due to suppression or misstatement on the part of the appellant. Thus, I am of the view that

penalty under Section 78 cannot be imposed on the appellant.

6. I view of the above, the impugned order is set aside and the matter is remanded back to the original authority for verification of the documents with

regard to the claim of the appellant to the benefits under Notification No.1/2006-ST. With regard to imposition of penalty, the impugned order is set

aside and the appeal is allowed in favour of the appellant.