

2013 (1) ECS (182) (Tri-Kol)

IN THE CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH : KOLKATA

M/s. Bispa India

Versus

Commissioner of Customs, Central Excise & Service Tax, Siliguri

Stay Petition No. SP – 355/10

In Appeal No. S.T. 145/10

[Arising out of Order-in- Original No. 05/COMMR/ST/SLG/09-10 dated 18.02.2010 passed by the Commissioner of Customs Central Excise & Service Tax, Siliguri]

M/s. Bispa India

Applicant (s) / Appellant (s)

Versus

Commissioner of Customs, Central Excise & Service Tax, Siliguri

Respondent (s)

Appearance:

Shri B.N. Chattopadhyay, Consultant for the appellant (s)

Shri S. Misra, Addl. Commr. (A.R.) for the Revenue

CORAM:

Hon'ble Shri S.K. Gaule, Member (Technical)

Hon'ble Dr. D.M. Misra, Member (Judicial)

Date of hearing: 02.07.2012

Date of decision:02.07.2012

ORDER NO 5-605/KOL/2012.

“Also on going through the ST – 3 returns we find that they have not claimed the abatement of 67 % as allowed under Notification No. 19/2003 – ST. We agree with the Id. A.R. that unless the said exemption is claimed and necessary conditions laid down therein are fulfilled by the applicant its benefit cannot be extended to them. “
[Para 5]

Per Dr. D.M. Misra

1. This is an application for waiver of pre-deposit of Service Tax of Rs. 1,63,14,087/- (Rupees One Crore Sixty Three Lakhs Forteen Thousand and Eighty Seven only) and equivalent amount of penalty imposed under section 78 of the Finance Act, 1994.
2. Briefly stated the facts of the case are that the applicant/appellant are registered with the central excise department w.e.f 11.04.2005 for providing erection, commissioning and installation services. It is the case of the Revenue that the amount of Service Tax paid by them as declared in the ST-3 returns when compared with their audited balance sheet it was found that during the financial years 2005 – 2006, 2006 – 2007 and 2007 – 2008 they have short paid Service Tax to the tune of Rs. 1.69 crores including Education Cess and Higher Education Cess. Proceedings were initiated against the applicant / appellant by issuing show cause notice dated 11.09.2009. The said show cause notice was confirmed and penalty was imposed by the Commissioner.
3. The Id. Consultant appearing for the appellant said that the services provided by them were a composite contract which included supply of material as well as supply of services namely erection, commissioning and installation. In other words, the service provided by them fall under the scope of works contract and the Service Tax was levied on the same w.e.f 01.06.2007. Further he has submitted that the Id. Commissioner while determining the Service Tax liability has failed to allow abatement of 67% admissible to them under Notification NO. 19/03 – ST dated 21.08.2003 and 1/2006 dated 01.03.2006. He has fairly submitted that in the event of abatement as considered the liability of Service Tax would drastically come down to an amount of Rs. 46 Lakhs. He has also submitted that the figures reflected in the balance sheet were cum tax which was not considered by the Id. Adjudicating authority in determining the Service tax liability. Though he has pleaded financial hardship, but failed to submit any document in support of the said claim.

4. Per contra the Id. A.R. submitted that the applicant / appellant are registered for providing erection, commissioning and installation services w.e.f 11.04.2005 and at no point of time they have claimed abatement as admissible under the Notification No. 19/2003 – ST and 1/2006 – ST in their ST – 3 returns. Hence the amount short paid based on the audited balance sheet are correctly calculated by the adjudicating authority.

5. Heard both the sides and perused the record. We find that the applicant / appellant undisputedly registered with the Service Tax department for erection, commissioning and installation services from 11.04.2005. Also on going through the ST – 3 returns we find that they have not claimed the abatement of 67 % as allowed under Notification No. 19/2003 – ST. We agree with the Id. A.R. that unless the said exemption is claimed and necessary conditions laid down therein are fulfilled by the applicant its benefit cannot be extended to them. Further we find that the period involved in the present case is 2005 - 2006, 2006 – 2007 and 2007 – 2008. Service Tax on ‘works contract’ was levied w.e.f 01.06.2007 hence majority of the period was covered under the erection, commissioning and installation services for which the applicant / appellant was registered w.e.f April, 2005. Prima facie we find that the applicant are not entitled to the benefit of abatement of 67 % allowed under Notification No. 19/2003 – ST as the same was not claimed and fulfillment of the conditions could not be verified by the lower authority. Thus the applicant could not able to make a prima facie case for waiver of entire amount of Service Tax and penalty imposed. The applicant could not establish any financial hardship though made a bare claim of the same. In these circumstances keeping in view the principle of law laid down by the Hon’ble Supreme Court and High Courts in disposing the applications for dispensing with the pre-deposit of duty and penalty and the interest of Revenue we direct the applicant / appellant to make a pre – deposit of 25% of Service Tax amount within a period of 8(eight) weeks and report compliance on 12.09.2012. On deposit of the said amount, the balance amount of Service Tax and penalty stand waived and its recovery stayed during pendency of the appeal. Failure to deposit the said amount would result in dismissal of the appeal without any further notice.

(Operative part of the order was pronounced in the open court.)