IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No.ST/991/2010-CU[DB]

(Arising out of Order-in-Appeal No.55-64-ST/MRT-II/2010 dated 25/02/2010 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Meerut)

M/s Oswal Overseas Ltd **Appellant**

Vs.

Commissioner, Central Excise, Meerut **Respondent**

Appearance:

Shri Kapil Vaish (CA) for Appellant
Shri Mohd Altaf Assistant Commissioner (AR), for Respondent

CORAM:

Hon'ble Mrs Archana Wadhwa,Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 03/07/2018
Date of Decision : 03/07/2018

FINAL ORDER NO.71350/2018

Per: Archana Wadhwa

The appellant, during the relevant period from 16.11.1997 to 01.06.1998 was availing the services from the "Goods Transporter Operators". Their factory was visited by the Central Excise officers on 27.03.2002 who entertained the view that in view of the retrospective amendment to the provisions of Finance Act, the assessee was under an obligation to discharge Service Tax on the said Services so received by them. Accordingly, the appellant was made to pay Service Tax on 27.03.2002.

2. The appellants subsequently claimed the refund of the same on 18.06.2002, on the ground that the issue stands decided in their favour by the Hon'ble Supreme Court's decision in the case of M/s Laghu Udyog Bharati Vs Union of India reported at 1999 (112) ELT 365 (SC) and the subsequent retrospective amendment made to the legal provisions would not require them to pay the Service Tax. Subsequently, they also placed reliance on the Tribunal's decision in case of M/s L.H. Sugar Factories LTD. Vs Commissioner of Central Excise, Meerut-II reported as 2004 (165) E.L T. 161 (Tri.–Del.), laying down that there being no requirement of filling of returns by the assessee, the amended provision of Section 73 would not be operating and would not come to effect.

3. The Commissioner (Appeals) while disposing of the appeal of the present appellant, held as under:-

> *''4.2 I find that there is no dispute about the levy of service tax for the period 16.11.1997 to 01.06.1998 on the receivers of the service of 'Goods Transport Operators'. But in view of the above two judgements of the Hon'ble Supreme Court, wherein it is held that notice to show cause issued to the receivers of service 'Goods Transport Operators' under section 73 of the Finance Act, 1994 are not maintainable, the contention of the appellants has force. Hence, the notices to show cause and impugned orders issued to all the appellants except M/s Oswal Overseas, Jindal Vegetable Products (vegetable product and refinery division both) are set aside and consequential relief is allowed, if any.*

4.3 As M/s Oswal Overseas, Jindal Vegetable Product (vegetable product and refinery division both) were not issued any notice to show cause, and they discharged their liability of service tax in compliance to the existing statuary provisions, the judgements supra relied upon by them are not applicable in their case. Hence impugned orders in respect of their cases are maintainable."

4. As is seen from above, the Appellate Authority is not disputing the fact that the issue is covered by the decision of the Tribunal and the Hon'ble Supreme Court but they did not extend the benefit to the assessee on the said ground that no show cause notice was issued to them for recovery of amount and the same stands deposited by the appellant on their own.

5. We find that an identical issue was subject matter of Tribunal's decision in the case of M/s Seksaria Biswan Sugar Factory Ltd. Vs Commissioner of Central Excise, Lucknow, Final Order No.70070/2015 dated 01.10.2015 wherein after taking into consideration the entire facts, benefit was extended to the assessee even though no show cause notice was issued and service tax was deposited by the assessee under the instruction of the Revenue. We fully agree with the above contention of the Learned Advocate that the appellant cannot be penalized for obeying the instructions of visiting staff. Accordingly, we set aside the impugned order and direct the authorities below to process the assessee's claim for refund of the deposited amount.

6. Appeal is allowed in above terms.

(Dictated in Court)

(Anil G. Shakkarwar)
Member (Technical)

(Archana Wadhwa)
Member (Judicial)

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