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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

CUSTOMS APPEAL BRANCH

Appeal No. ST/1658/2010 - CU[DB] Date **28/09/2011**
ST/S/3523/10

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S ORIENTAL BANK OF COMMERCE,

CENTRAL ACCOUNTS OFFICE, F-14, COMPETENT HOUSE, CONNAUGHT PLACE, NEW DELHI.
110001

M/S ORIENTAL BANK OF COMMERCE, Appellant

Vs

C.C.E. DELHI IV Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/521/ 2011 CU[DB]** dated 19.09.2011 passed by the Tribunal under **Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax**

Alongwith Stay Order No ST/672/11

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
C.C.E. DELHI IV
NEW CGO COMPLEX, NH-IV,
FARIDABAD, HARYANA 121001.

2. Adv. / Consult : Mr. S.Ananthan, CA
#643, Ist Main 7th Block II Phase
BSK III Stage, Banglore – 85

3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications. Customs. Excise. I.P. Estate. New Delhi
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi - 110005
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road. Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(Customs Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. III

Service Tax Stay Application No. 3523 of 2010 in Appeal No. 1658 of 2010

[Arising out of the Order-in-Appeal No. 217/ST/DLH/2010 dated 20/08/2010 passed by The Commissioner (Appeals), Central Excise, Delhi – I.]

For Approval and signature :
Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Rakesh Kumar, Member (Technical)

1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? :
2. Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? :
3. Whether their Lordships wish to see the fair copy of the order? :
4. Whether order is to be circulated to the Department Authorities? :

Oriental Bank of Commerce — Appellant

Versus

CCE, Delhi – IV — Respondent

Appearance

Shri S. Ananthan, C.A. – for the appellant.

Shri Sunil Kumar, Authorized Representative (SDR) - for the Respondent.

CORAM : **Hon'ble Ms. Archana Wadhwa, Member (Judicial)**
Hon'ble Shri Rakesh Kumar, Member (Technical)

DATE OF HEARING : 29/08/2011.
DATE OF DECISION : 29/08/2011.

Stay order No. ST/672/11

Final Order No. ST/521/11 Dated : 19.9.11

Per. Rakesh Kumar :-

The facts leading to this appeal are, in brief, as under.

1.1 The appellant are the Public Sector Bank and provide banking and financial services. The appellant's regional office at Delhi had obtained service tax registration and was discharging service tax liability in respect of all the branches in the Delhi region. They were also filing the required Service tax returns. Under Rule 6 (3) of Service Tax Rules, 1994, where an assessee had paid to the credit of Central Government, service tax in respect of a taxable service which is not so provide by him either wholly or partly for any reason, the assessee may adjust the excess service tax so paid by him calculated on pro-data basis against his service tax liability for the subsequent period, if the assessee had refunded the value of taxable service and the service tax thereon to the person from whom it was received. Sub-rule (4) of Rule 6 of the Service Tax Rules, provides for provisional assessment in a situation where the assessee, for any reason, is unable to correctly estimate, by the due date of deposit of tax, the actual amount payable for any particular month or quarter, as the case may be. Sub-rule 4A of Rule 6 provides that notwithstanding anything contained in sub-Rule (4), where an assessee had opted for centralized registration under Rule 4 (2) and has paid credit to the Central Government, any amount in excess of the amount required to be paid towards service tax liability for a month or quarter, as the case may be, for the reason of not receiving the details of the payment received towards the value of the services at his other premises or offices, he may adjust such excess amount so paid as service tax by him against the service tax liability for the subsequent period and the details of such adjustment shall be intimated to the Jurisdictional Superintendent of Central Excise within a period of 15 days from the date of such adjustment.

1.2 In this case it appears there was some excess payment during the period from April 2005 to September 2005, as in course of scrutiny of ST-3 returns for the period from October 2005 to March 2006, the officers found that the appellant had adjusted service tax amount of Rs. 13,95,399/- paid upto September 2005 against their liability for December 2005 – January 2006 period under Rule 6 (4A) of Service Tax Rules, 1994, without submitting any documentary evidence. The department was, therefore, of the view that during the period from December 2005 to January 2006 service tax amounting to Rs. 13,95,399/- has been short paid. The Jurisdictional Additional Commissioner vide order-in-original dated 13/11/09 confirmed the service tax demand of Rs. 13,95,39/- alongwith interest and also imposed penalty of Rs. 1,000/- on the appellant under Section 77 and penalty of Rs. 200/- per day till the date of payment of service tax demanded under Section 76 of the Finance Act, 1994. The appellant filed an appeal before the Commissioner (Appeals) against the Additional Commissioner's order and the Commissioner (Appeals) vide order-in-appeal dated 20th August 2010 dismissed the appeal. The Commissioner (Appeals) while dismissing the appeal observed that it is, Rule 6 (3) of Service tax Rules which was applicable in the case of the appellant, but for adjustment under this Rule, the appellant have not satisfied the required conditions, as they have not shown that the amount alleged to have been excess paid and whose adjustment is sought, had been refunded to the customers. Against this order of the Commissioner (Appeals), the present appeal has been filed.

2. Heard both the sides. Though this matter had been listed for hearing of stay application only, after hearing the same for sometime, we are of the view that the appeal itself can be finally disposed of. Accordingly, with the consent of both the sides, the matter was heard for final disposal after waiving the requirement of pre-deposit.

2.1 Shri S. Ananthan, C.A., the learned Counsel for the appellant, pleaded that it is the appellant's regional office at Delhi which had obtained centralised registration and was discharging service tax liability on behalf of all their branches within this region, that service tax registration of the regional office of the appellant at Delhi has to be treated as centralised registration under Rule 4 (2) of Service Tax Rules, 1994, that in view of this, the provisions of sub-Rule (4A) of Rule 6 would be applicable to the appellant under which the excess service tax paid during a month can be adjusted the same against the service tax liability of some other months, that the claim for adjustment under sub-Rule (3) of Rule 6 was only an alternate claim and the lower Appellate Authority has gone wrong in not considering the adjustment under Rule 6 (4A), that excess payment of service tax to the tune of Rs. 13,95,399/- during April, 2005 – September 2005 period is evident from the ST-3 filed for that period and, therefore, this excess amount of service tax had been correctly adjusted against their service tax liability for December 2005 – January 2006 period, and that in view of this, the impugned order is not correct.

2.2 Shri Sunil Kumar, the learned Senior Departmental Representative, defended the impugned order by reiterating the findings of the Commissioner (Appeals) and emphasised that no evidence has been produced by the appellant that they had centralised registration, that the appellant for the purpose of tax adjustment are covered only under Rule 6 (3) and that since they do not satisfy the conditions of Rule 6 (3) as they have not shown that the amount of excess payment which is sought to be adjusted had been refunded to their customers, they are not eligible for adjustment and that in view of this, there is no infirmity in the impugned order.

3. We have carefully considered the submissions from both the sides and perused the records.

4. Sub-Rule (3) of Rule 6 covers a situation where an assessee after collecting the amount for the services to be

provide in advance from the customers, is subsequently not able to provide the service either in full or in part and in such a situation, if he wants to adjust the excess payment against tax liability in some other month, he would have to produce the evidence that the excess amount of service tax calculated on pro-data basis alongwith the value of taxable service had been refunded to the customers.

5. Sub-Rule (4A) of Rule 6 covers a situation where an assessee having centralised registration discharges service tax liability for all its offices located at different places and while discharging service tax liability for all the offices located at different places, there has been an excess payment and in such a situation this excess payment can be adjusted against tax liability for subsequent months and for this, there is no need to refund the amount of excess payment to the customers.

6. In this case, the appellant's plea is that they are covered by sub-Rule (4A) of Rule 6. On going through the impugned order, we find that this plea has not been considered at all, while from the undisputed facts, it appears that the appellant were having centralised registration as their claim is that it is their regional office which had obtained service tax registration and was discharging service tax liability for all the branches in the region. In view of this, the impugned order is set aside and the matter is remanded to the Commissioner (Appeals) for denovo decision after considering the appellant's plea with regard to their case being covered under sub-Rule (4A) of Rule 6 and also their plea

that there was excess payment of service tax to the tune of Rs. 13,95,399/- during April – September 1995 period.

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

(Archana Wadhwa)
Member (Judicial)

(Rakesh Kumar)
Member (Technical)

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