

Customs, Excise and Gold Tribunal - Delhi

Agauta Sugar And Chemicals vs Commissioner Of C. Ex. on 30 August, 2007

Equivalent citations: 2007 8 S T R 496

Bench: N T C.N.B.

ORDER C.N.B. Nair, Member (T)

1. These appeals raise a common issue i.e. whether Service Tax in relation to goods transport service, received by a party during the period November, 1997 to June, 1998, can be recovered by issuing show cause notice in 2004.

2. It is seen that there is difference of opinion among the Benches of the Tribunal, as evidence by the decisions in the case of BPL, Engineering Ltd. v. CST 2006 (3) S.T.R. 747 (Tri.- Bang.), R.K. Marble Pvt. Ltd. 2006 (4) S.T.R. 201 (Tri.) : 2007-TIOL-29, Mangalam Cement Final Order Nos. 332-33/07, dated 30-5-2007 : 2007 (7) S.T.R. 673 (Tribunal). It is also of particular significance that the judgment of the Hon'ble Supreme Court in the case of L.H. Sugar Factories Ltd. 2006 (3) S.T.R. 715 (S.C.) : 2005 (187) E.L.T. 5 (S.C.) was delivered subsequent to the judgment in the case of Gujarat Ambuja Cement Ltd. v. Union of India and the later judgment is directly on the question of recovery of paid tax and it has been held that recovery is not permissible. The former judgment is on the question of validity of retrospective amendment.

3. An entirely new issue raised by the appellants in these appeals is that a retrospective amendment to recovery provisions would not revive already time barred cases. This submission is raised relying on the decisions of the Hon'ble Supreme Court in the cases of S.S. Gadgil v. Lai & Co. , KM. Sharma v. ITO and Varkey Jacob and Co. v. CTT .

4. In view of the above the issue would seem to require fresh consideration by a Larger Bench Registry may place the case before the Hon'ble President for considering the constitution of such a Bench.

(Pronounced in open court on 30-8-2007)