



PRACTICE AREA UPDATE INDIRECT TAX

Hon'ble CESTAT Bengaluru sets aside a demand of IGST forming part of Customs duty on the ground that extended period of limitation cannot be invoked

An Appeal was filed by a leading Public Sector undertaking before the Hon'ble CESTAT Bengaluru challenging the Order denying the exemption benefit availed by the Company under the Notification No. 19/2019 dated 06.07.2019 in respect of import of software required for Missile System.

It was submitted on behalf of the Company that the department confirmed the present demand by invoking extended period of limitation on the grounds that the description 'Software' is not specified under Sl. No.21 of the said notification and the Joint Secretary Certificate covered exemption to an analysis report and not procurement of software. It was submitted that the Company being a public sector undertaking, imported Software pertaining to LRSAM system and MFSTAR for defence purposes, thus it cannot be said that the company has intention to evade payment of duty as the company is. Further, the Company under a bonafide belief that the said import qualifies for exemption under Notification No.19/2019. Since the Company has not wilfully suppressed any information with the intention to evade payment of tax, extended period of limitation is not invocable in the present case and the Order is barred by limitation.

In this regard the counsel for the department argued that since imported software is already embedded in the LRSAM System, the subsequent import of the same was not required and the ownership of such imported software was never transferred to ministry of defence. Hence, invoking extended period of limitation is justified in the present case as description 'Software' is not specified the Notification.



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The Hon'ble CESTAT after considering the aforesaid submissions observed that merely because the imported software is not supplied to Ministry of Defence cannot be a ground to deny exemption benefit under the exemption notification. The tribunal held that extended period of limitation cannot be invoked merely because it is a case of self-assessment. Further, the Company being a public sector undertaking under the Ministry of Defence and the imported Software being for defence purposes, indicated that the Company had no intention to evade payment of duty. Therefore, invocation of extended period of limitation in the facts and circumstances of the case is not justified.

Accordingly, the Hon'ble CESTAT by holding that the invocation of extended period of limitation is unsustainable and set aside the Order, thereby allowing the Appeal.

The client was advised by the firm, led by a team of Partner Prashanth Shivadass, Associate Partner, Rishab J, Principal Associate Shradha Rajgiri and Associate, Sneha Suresh. The arguments before the Hon'ble Tribunal were led by Senior Advocate, Mr. G. Shivadass.



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Prashanth Shivadass



Rishab J



Shradha Rajgiri



Sneha Suresh