

Mere registration under the Companies Act does not meet the requirements of a “Business Entity”- CESTAT Mumbai

18 April 2022



Summary

The Customs, Excise & Service Tax Appellate Tribunal (CESTAT) Mumbai has held that the appellant does not qualify as a “business entity” as it has neither undertaken any activity nor earned any profit since its closure. Further, the CESTAT observed that merely because the appellant is still registered under the Companies Act and has not surrendered its registration, it cannot be said that it is carrying out some business activity. The CESTAT noted that the revenue authorities did not mention in the Show Cause Notice (SCN) and did not put forward any document to show that the appellant engaged in any business activity. Therefore, the appellant is not covered under the definition of “Business Entity” and the service tax paid is liable for a refund.

Facts of the case

- The appellant¹ was engaged in business auxiliary services, management or business consultancy services, etc. The appellant was paying service tax under Reverse Charge Mechanism (RCM) on the legal consultancy service.
- The appellant’s holding company had filed petition for bankruptcy. Thus, for closure and winding up of business, the appellant received legal consultancy services and discharged service tax under protest on RCM basis.
- The appellant contended that the business has been discontinued, thus, liability to pay service tax does not arise. Hence, the appellant had then filed refund application of service tax paid as it was covered by the exemption notification².
- The appellant placed reliance on decision³ of the Apex Court wherein it was held that activity undertaken in the course of winding up is not an activity for furtherance of any business. Thus, legal

expenses incurred in relation to winding up of an entity are not for furtherance of any business.

CESTAT Mumbai observations and ruling⁴:

- **Appellant is no more a “Business Entity”:** The definition of “Business Entity” is applicable on an entity normally indulged in any activity which is profit motivated. The apprehension of the revenue is groundless as there is no evidence to show that the appellant has indulged in any business activity in past so many years. Neither the SCN nor any other record show that the appellant has earned any profit in these years. Thus, the appellant cannot be saddled with tax liability on basis of such unfounded apprehension.
- **Submission is without any basis:** There arose a suspicion in mind of the revenue that even after so many years of closure of business, the appellant is still availing legal consultancy services.

¹ Lehman Brothers Securities Pvt. Ltd.

² 25/2012-ST dated 20.06.2012

³ Vijaya Laxmi Sugar Mills v/s CIT; AIR 1991 SC 2042

⁴ Service Tax Appeal No. 89484 of 2018, order dated 6 April 2022

However, this submission is without any basis as nothing on record substantiates such contention. Since the appellant is still registered under the Companies Act and has not got the said registration cancelled, it does not mean that the appellant is carrying out business activity. Therefore, the order for rejection of refund application is liable to be set aside.

Our comments

The Apex Court in the case of Vijaya Laxmi Sugar Mills⁵ had held that the activity undertaken in the course of winding up is not an activity for furtherance of any business carried on by the company before its winding up.

Similarly, the Karnataka High Court in the case of Mysore Standard Bank Limited⁶ had held that the expenditure incurred at the time or for the purpose of closing the business cannot be considered as "expenditure incurred for the purpose of such business".

The present ruling is also in line with the above ruling which clarifies term "Business Entity" and elucidates that mere registration under the Companies Act does make an entity a business entity. Thus, it is an important decision, which shall bring required relief and set precedent in similar matters.

⁵ AIR 1991 SC 2042

⁶ 1962(64) ITR278.

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