IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CENTRAL EXCISE APPEAL N0. 8 OF 2015

m/S Vasantrao Naik Shetkari Sahakari Trust, Yavatmal
-Vrs.-
Commissioner, Central Excise and Customs, Nagpur.

Office Notes, Office Memoramda of Coram, appearances, Court's orders of directions and Registrar's Orders.	Court's or Judge's orders.

CORAM : B.P. DHARMADHIKARI AND
P.N. DESHMUKH, JJ.
DATED : 9th OCTOBER, 2015

Heard Advocate M.R. Pillai and advocate A. Deshpande.

This Court while issuing notice in the matter on 09.07.2015 noted contention of appellant that during the later year the alleged service provided by appellant is found not amenable to service tax and therefore issued notice. On 7.9.2015 this court again noted said contentions and advocate Pillai on that date pointed out that subsequent proceedings were withdrawn. Again on 16.9.2015 after noticing these developments, time was given to respondent to point out correct position.

Shir Deshpande today on instructions states that on 29.4.2015 for period from February, 2012 onwards service rendered by appellant is held not taxable. He, however, points out that the question before this court is from May 2005 to January 2010.

The learned counsel for appellant has urged that nature of service has not undergone any change and activity remains the same. The activity is of providing labour for harvesting sugarcane. The appellant is a trust and the labour are paid for undertaking harvesting operation.

With the very same contentions the appellant had filed appeal no. ST/110/2012 before the CESTAT. It appears that in the appeal they sought waiver of per-deposit and it was not granted. Hence, another application was moved for modification and that application has been rejected on 6.4.2015. After that rejection, for failure to comply with pre-deposit direction, appeal has been dismissed.

After this order and in separate matter, vide order passed on 29.4.2015 for later period, the appellant assessee is found not liable to pay any tax.

In this situation, the question is whether in the light of later order, if the nature of service remains same, the appellant can be held amenable to service tax arises for consideration ?.

We find that interest of justice demands restoration of appeal bearing No. ST/110/2012 back to file of CESTAT.

We, in this situation, as in later period the services rendered by appellant are held not amenable to service tax, grant the prayer for waiver of per-deposit. The appeal is restored for a fresh adjudication on merits.

We direct the parties to appear before the Appellate Authority on 30th November, 2015 and abide its further orders.

Central Excise Appeal is accordingly partly allowed and disposed of. No costs.

JUDGE **JUDGE**

Hirekhan