CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH : AHMEDABAD

REGIONAL BENCH - COURT NO. 3

SERVICE TAX Appeal No. 12617 of 2014-DB

[Arising out of Order-in-Original/Appeal No SUR-EXCUS-001-COM-002-14-15 dated 23.04.2014 passed by Commissioner of Central Excise, Customs and Service Tax-SURAT-I]

Venus Photo Express .... **Appellant**
H-21, Parle Point Place,
Parle Point, Athwa Lines, SURAT, GUJARAT

VERSUS

Commissioner of Central Excise & ST, Surat-i .... **Respondent**
New building, opp. Gandhi Baug,
Chowk Bazar, Surat, Gujarat -395001

APPEARANCE :

Ms. Trishla B. Sheth, Advocate for the Appellant
Shri Sanjay Kumar, Superintendent (AR) for the Respondent

CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. C.L. MAHAR, MEMBER (TECHNICAL)

DATE OF HEARING : 01.03.2024
DATE OF DECISION: 28.06.2024

FINAL ORDER NO. 11455/2024

RAMESH NAIR :

The present appeal is filed against the impugned order-in-original dated 23.04.2014 passed by Commissioner of Central Excise, Surat-I confirming the demand of Rs. 60,36,100/- along with interest and equal amount of penalty under Section 78 of the Finance Act, 1994 for the period 2008-09 to 2011-12 on the printing activity undertaken by the appellant of inkjet printing/ off jet printing/ digital printing of catalogue. According to the appellant these activity amounts to manufacture of excisable goods and falling under Chapter heading 49.11 of the Central Excise Tariff whereas the learned Commissioner classified the same as service activity under Photographic studio or agency service under Section 65 (79) read with Section 65 (105)(zb) of Finance Act, 1994.

2. Ms. Trishla B. Sheth, learned Counsel appearing on behalf of the appellant submits that their activity is clearly of inkjet printing/ offset printing/ digital printing of catalogue and brochures and various other printing activities which amounts to manufacture falling under Chapter 49.11 of Central Excise Tariff. Therefore, any activity established as a manufacturing activity, the same cannot be liable to service tax. She also submits that appellant have paid VAT on the sale of printed catalogues and brochures therefore, the sale is out of the purview of service tax. She also submits that since the demand was raised on the basis of audit of the appellant's documents, there is no suppression of facts therefore the extended period of five years was wrongly invoked in the show cause notice. She placed reliance on the following judgments:-

(a) 2019 (22) GSTL 386 (Tri. Chan.) - Venus Photo Albums Pvt. Limited vs. CCE, Chandigarh

(b) 2018 (12) GSTL 95 (Tri. Chennai) - CCE, Salem vs. Swathi Institute of Computer Technology.

3. On the other hand Shri Sanjay Kumar, Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. On carefully consideration of the submissions made by both the sides and perusal of record, we find that as per the activity involved in the present case, it prima-facie appears that the appellant are not involved in photographic service which is liable to service tax whereas their activity appears to be of printing of catalogue and brochures which is a manufacturing activity as per Section 2(f) of Central Excise Act, 1944 and appears to be classifiable under Chapter 49.11 of Central Excise Tariff.

However, we find that the Adjudicating Authority has decided the entire matter assuming that the activity is of photography. He has not examined properly the possibility of activity classifiable under Central Excise Tariff Chapter 49 being manufacturing activity. It also appears that the Adjudicating Authority has not properly examined the actual nature of the activity that whether it is photography simpliciter or a printing catalogue and brochures. The printing activity is chargeable to VAT at the rate of 5% as per the provisions of Gujarat Value Added Tax Act, 2003 and the appellant have indeed discharged such VAT as can be seen from the sample invoices enclosed with the appeal papers. Therefore, on all these aspects, the learned Commissioner has failed to give proper findings. Accordingly, in our view the matter needs to be reconsidered by the Adjudicating Authority. Hence the impugned order is set-aside and the appeal is allowed by way of remand to the Adjudicating Authority.

(Pronounced in the open court on 28.06.2024*)*

(Ramesh Nair)
Member (Judicial)

(C L Mahar)
Member (Technical)

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