IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No.ST/868/2011-CU[DB]

(Arising out of Order-in-Appeal No. 65-66/ST/LKO/2011 dated 14/03/2011 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Lucknow)

M/s Amroon Foods Pvt. Ltd., **Appellant**

Vs.

Commissioner of Central Excise, Lucknow **Respondent**

Appearance:

Shri Sanjay Kumar, Advocate for Appellant
Shri Pawan Kumar Singh, Supdt (AR) for Respondent

CORAM:

Hon'ble Mr. Ashok Jindal, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 24/07/2018
Date of Decision : 24/07/2018

FINAL ORDER NO-71641/2018

Per: Anil G. Shakkarwar

Heard the parties, considered the submissions and perused the records.

2. On perusal of record, we find that the appellants are engaged in the business of export of frozen meat to various countries. The appellants engaged foreign agents in foreign countries for getting the meat exported from India to be cleared in foreign countries and delivering such goods to the consignees. The foreign agents also help the appellant in collecting the proceeds of the exported goods. The basic issue

to be decided in this appeal is whether the service rendered by the foreign agent is classifiable under “Clearing and Forwarding Agent Service” or as “Business Auxiliary Service”. We also find that the appellant are not liable for payment of service tax under the provisions of Section 66A of Finance Act, 1994 in respect of services received as ‘Clearing and Forwarding Agent Service’ in terms of provisions of said Taxation of Services (Provided from Outside India and Received in India) Rules, 2006. We find that contention of revenue is that the said services are classifiable as ‘Business Auxiliary Service’ and in terms of provisions of Taxation of Services Rules, if Business Auxiliary Services are performed outside India and if the person receiving the services is located in India then the same are liable for service tax under Reverse Charge Mechanism. We find that the appellant entered into an agreement with the foreign agents which required foreign agent to monitor all the shipments of frozen meat arriving in their country from India, pay the port dues, health clearance charges, demurrage and do all acts for safe clearance of goods till their delivery to the consignees in the foreign countries. Further, the foreign agents are also responsible for all post shipment services and payment of Government dues necessary for such purposes. The foreign agents are also having an obligation to follow up with the foreign importers for realization of export proceeds on behalf of the appellant. The contention of revenue is that since the foreign agents are responsible for realization of export proceeds, the service is classifiable under 'Business Auxiliary Service' because the activity is similar to billing, issue or collection and recovery of cheques, payments etc. On the contrary contention of appellant is that the definition of 'Business Auxiliary Service' under Section 65 (19) covers collection of payment for the taxation purpose only, if such collection of payment is done as incidental or auxiliary to any of the activities specified at Items No. (i) to (vi) of the said definition. The learned Counsel for the appellant further submits that the foreign agents are not issuing any bill nor collecting any money nor recovering cheques or payments and that one of the small portion of their service is towards follow up for realization of export proceeds and that the shipment of service is in respect of clearance of goods and forwarding of the same to the consignee. The appellants have further contended that following up for payment is not done as incidental or auxiliary to promotion of sale and therefore, the service is not classifiable under 'Business Auxiliary Service'.

3. Learned A.R. for revenue supports the contention of revenue.

4. On consideration of arguments from both sides and on perusal of agreement between the appellant and foreign agent, we find that there is no responsibility cast on the foreign agent for promoting the sale of goods produced by the appellant. We do not find any activity mentioned in the

agreement to fit into one of entries at Sl. No. (i) to (vi) of the definition under Section 65 (19) of the Finance Act, 1994. Therefore, we hold that the services rendered by foreign agents to the appellant are correctly classifiable as clearing and forwarding agent service. Therefore, impugned Order-in-Appeal is not sustainable.

5. We, therefore, allow the appeal filed by the appellant. The appellant shall be entitled for consequential relief, as per law.

(Pronounced in Court)

(Ashok Jindal)
Member (Judicial)

(Anil G. Shakkarwar)
Member (Technical)

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