

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD**

REGIONAL BENCH - COURT No. I

Service Tax Appeal No.71323 of 2018-Division Bench

(Arising out of Order-in-Appeal No. MRT/EXCUS/000/APPL-MRT/185/2018-19 dated 05/07/2018 passed by Commissioner of Central Goods & Service Tax (Appeals), Meerut)

Commissioner of Central Goods

& Service Tax, Meerut

.....Appellant

(Mangal Pandey Nagar, Opp. CCS University, Meerut-250005)

VERSUS

M/S Weavetex Overseas

....Respondent

(Pathshala Road, Khekra, Distt.-Baghpat, U.P.-250101)

APPEARANCE:

Shri Pawan Kumar Singh, Authorised Representative for the Appellant
Absent for the Respondent

CORAM:

HON'BLE SMT. ARCHANA WADHWA, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 71032 / 2019

Date of Hearing : 21 May, 2019
Date of Decision : 21 May, 2019

PER: ARCHANA WADHWA

Being aggrieved with the order passed by Commissioner (Appeals) Revenue has filed the present appeal. We have heard learned A.R. appearing for the Revenue, nobody appeared for the respondents. For better appreciation of the disputed issue as also reasoning adopted by Commissioner (Appeals), we reproduce relevant paragraph from the impugned order as under:-

"6. I have carefully gone through the facts and records of the case as well as the submissions made by the appellant. I find that the appellant has submitted that the agents located abroad were paid remuneration for procuring export orders and as per Notification No.18/2009-ST dated 07/07/2009 & Notification No.42/2012-ST dated 29/06/2012, if the commission paid is less than 10% of the FOB value, no service tax is payable on the services provided by the commission agents and that the necessary documents to establish that the commission paid was below 10% of FOB were provided to the audit as well as during adjudication. The appellant has further submitted that it is a fact that there were technical/procedural lapses & the exemption under the above referred notifications were not claimed while filing the returns. The Adjudicating Authority, in this regard, has stated that since the appellant has not submitted any documents/proof to show that he had fulfilled the conditions/procedure prescribed in the said notifications, therefore, the benefit of said notifications cannot be extended to the appellant. In this regard, I find that there is nothing in the impugned order to show that the requisite documents were asked to be submitted by the adjudicating authority and the same were not provided by the appellant. I further find that the major condition in the said notifications was that the exemption was limited to certain percentage (as prescribed in respective notification as per relevant period) of FOB value and I find that the SCN itself alleges that the consideration/commission paid as a percentage of the FOB value. From the copies of Shipping Bills submitted by the appellant, it is seen that commission payable was declared on the shipping bills and rate of commission paid has been shown as 5% and accordingly, the other major condition of the said notifications is fulfilled. The SCN as well as the impugned order acknowledges that the impugned services were received by

the appellant & used for export of goods. Moreover, there is nothing in the SCN or in the impugned order to show that the exported goods were canalized. The only thing was that the benefit of the said notifications was not claimed at initial stage."

2. Accordingly, the Appellate Authority has extended the benefit to the respondents. The benefit also stands extended on the point of limitation by observing as under:-

"6.3. The appellant has also contended that extended period of limitation is not invokable as the amounts paid to the foreign agents were reflected in his books of accounts and the commission payable was declared on the shipping bills vide which the exports were made. The SCN issued to the appellant alleges that the fact of receipt of BAS & payments made to the overseas service providers was suppressed from the department and the appellant did not pay applicable service tax on such services knowingly with intent to evade payment of service tax. In this regard, I find that the SCN itself speaks that it was observed from the "Profit & Loss Account" of the appellant that consideration/commission was paid to foreign agents. Besides, the commission payable was also declared on the shipping bills. Under the facts and circumstances as narrated above, the allegation of suppression is not sustainable. In the case of Uniworth Textiles Ltd. vs. Commissioner of Central Excise, Raipur – 2013 (288) E.L.T. 161 (S.C.), it was held that mere non-payment of duties is not equivalent to collusion or willful misstatement or suppression of facts, otherwise there would be no situation for which ordinary limitation period would apply. Inadvertent non-payment is to be met within the normal limitation period and the burden is on Revenue to prove allegations of willful misstatement. The onus is not on the appellant to prove his bona fides. In the case of Chemphar

Drugs – 1989 (40) E.L.T. 276 (S.C.), the Supreme Court held that something positive other than mere inaction or failure on the part of the assessee or conscious or deliberate withholding of information when assessee knew otherwise, is required before it is saddled with the liability during the extended period. In Continental Foundation Joint-venture – 2007 (216) E.L.T. 177 (S.C.), Supreme Court went to the extent of ruling that mere omission to give correct information is not suppression of facts, unless it was deliberate and that an incorrect statement cannot be equated with willful misstatement. Non-payment of tax does not amount to intent to evade tax. Moreover, the notifications were there which exempted the payment of service tax on said services when used in export of goods and, the matter was revenue neutral, as the appellant was entitled to take the credit of service tax paid. Therefore, extended period is not invokable for the demand and penalty under Section 78 of the Act is also not sustainable.”

3. As the denial of the benefit is only on short ground of procedures required to be adopted in terms of the Notification, we find no reasons to deny the substantive benefit otherwise available to the appellant. No infirmity is found in the impugned order of Commissioner (Appeals). Accordingly, Revenue’s appeal is rejected.

(Dictated and pronounced in open court)

Sd/-
(Archana Wadhwa)
Member (Judicial)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)