CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE

Application(s) Involved:

ST/Early Hearing/21099/2015 in ST/2548/2012-DB

Appeal(s) Involved:

ST/2548/2012-DB

[Arising out of Order-in-Appeal No. 135-2012 dated 15/06/2012 passed by CCE,C&ST(Appeals), Cochin]

PRATHEESH K PHILIP, M/S. GEOJIT
XXV, HOUSE NO.310, COLLEWGE ROAD,
P.O.JUNCTION, KOTHANMANGALAM- 686691

Appellant(s)

Versus

Commissioner of Central Excise, Customs and Service Tax
COCHIN-CCE
NULL C R BUILDING,
I S PRESS ROAD, ERNAKULAM,
COCHIN, - 682018
KERALA

Respondent(s)

Appearance:

Shri Bobby Varghese / Shri M.S. Nagaraj
HIRAGANGE & ASSOCIATES
#1010, 1st floor(Above Corp.Bank) 26th Main, 4th T Block, Jayanagar,
BANGALORE - 560041
KARNATAKA

For the Appellant

For the Appellant
For the Respondent

Date of Hearing: 13/12/2017
Date of Decision: 13/12/2017

CORAM:

HON'BLE SHRI S.S. GARG, JUDICIAL MEMBER
HON'BLE SHRI V. PADMANABHAN, TECHNICAL MEMBER

Final Order No. 23315 / 2017

Per : S.S. GARG

Today the case was fixed for early hearing as the appellant has stated in the application that his case is covered by the Division Bench of this Tribunal in the case of B. Haridas +1 Vs. CCE,C&ST, Cochin vide Final Order No.20188 & 20189/2014 dt. 06/02/2014. Since the issue is in a narrow compass, with the consent of both the parties, we proceed to decide the appeal on merit after allowing the early hearing application.

2. Briefly the facts of the present case are that the appellant Shri Prathees K. Philip entered into agreements with M/s. Geojit Financial Services Ltd. (GFSL) and M/s. Geojit Commodity Services Ltd. (GCSL) to act as an intermediary between the principals and individual investors. GFSL as a broker registered with National Stock Exchange and Bombay Stock Exchange offers a trading platform for the investing customers either directly or indirectly through business associates while GCSL offers the same option in relation to future trading on a recognized commodity exchange with which it is registered as a member. In the case of investors who are not directly registered on the trading platform offered by the principals, business associates such as Shri Pratheesh K Philip who are located at different places, offer the facility of placing buy or sell orders which are executed on the platform installed at the premises of the business associate. They are therefore in the nature of branches of the member. The business associates claim to be exempt from service tax liability as they render services on behalf of the principal who discharges the service tax liability on the consideration received from customers for the

rendering of services in relation to share trading and commodity futures. On these allegation, a show-cause notice was issued and after following the due process, tax along with interest and penalties were confirmed. Aggrieved by the said order, appellant filed appeal before the Commissioner(Appeals) who upheld the Order-in-original and directed the authorities to recompute the amount as well as penalty under Section 78. But the penalty under Section 76 was set aside by the Commissioner(Appeals). Hence the present appeal.

3. Heard both the parties and perused records.

4. Learned counsel for the appellant submitted that the impugned order is not sustainable in law as the same has been passed without considering the law and the facts and the judgments delivered by this Tribunal in an identical case. He further submitted that the Board has clarified vide Notification No.3/2014-ST dt. 03/02/2014 vide which exemption was granted to the sub-brokers. He further submitted that the Tribunal in the identical case of B. Haridas +1 Vs. CCE,C&ST, Cochin vide Final Order No.20188 & 20189/2014 dt. 06/02/2014 set aside the impugned order by allowing the appeal of the assessee. It is pertinent to reproduce para 4 of the said decision, which is reproduced herein below:-

> *4. Taking a view that the amounts collected by the appellants for Forwarding service, proceedings were initiated which culminated in confirmation of total demand of service tax of Rs.46,255/- for the period from 01/04/2009 to 31/05/2009. Learned counsel submits that Board has issued a Notification No.3/2014-ST dt. 03/02/2014*

> *exempting liability to service tax during the period from 10/09/2004 to 30/06/2012. In view of the retrospective amendment carried out and exemption made available for the service, there is no liability. In view of the above, the impugned orders are set aside and the appeals are allowed with consequential relief to the appellants.*

5. Since the issue involved in the present case is the same , by following the ratio of the above said decision, we are of the considered view that the impugned order is not sustainable in law and therefore we set aside the impugned order by allowing the appeal of the appellant with consequential reliefs, if any.

(Operative portion of the Order was pronounced
in Open Court on **13/12/2017**)

V. PADMANABHAN
TECHNICAL MEMBER

S.S. GARG
JUDICIAL MEMBER

Raja...