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

Appeal(s) Involved:

ST/449/2008-DB

[Arising out of No. 104/2008 ST dated 30/05/2008 passed by CCE,C&ST(Appeals), Cochin]

RUCHI WORLD WIDE LTD
V, 573, PANNIVELIL WHAREHOUSE,
MENONPARA ROAD, KANJIKODE, PALAKKAD

Appellant(s)

Versus

C.C.,C.E.& S.T-COCHIN-CCE
C R BUILDING,
I S PRESS ROAD, ERNAKULAM,
COCHIN,
KERALA
682018

Respondent(s)

Appearance:

Shri Sunil Singh, Manager — For the Appellant

Dr. J. Harish, Dy. Commissioner(AR) — For the Respondent

Date of Hearing: 18/07/2018
Date of Decision:___________

CORAM:

HON'BLE MR. S.S GARG, JUDICIAL MEMBER
HON'BLE MR. P. ANJANI KUMAR, TECHNICAL MEMBER

Final Order No. ________/ 2018

Per : S.S GARG

The present appeal is directed against the impugned order dt. 30/05/2008 passed by the Commissioner(Appeals) whereby the Commissioner(Appeals) has rejected the appeal of the appellant and upheld the Order-in-Original.

2. Briefly the facts of the present case are that on gathering intelligence that the appellants are paying service tax on services provided

under the category of Clearing & Forwarding (C&F) Agent, the officers visited their premises. On further investigation, it appeared that they have been doing business of consignment agent and were not paying tax on the gross amount received. Hence a show-cause notice was issued to demand an amount of Rs.2,42,867/- towards service tax payable for the period from July 2002 to September 2004 with interest as applicable and proposing penalty under Section 75A, 76 and 78 of the Finance Act, 1994. The lower authority after due process of law confirmed the demand and imposed penalty. Aggrieved by the said order, appellant filed appeal before the Commissioner(Appeals) who rejected the said appeal. Hence the present appeal.

3. Heard both sides and perused records.

4. On behalf of the assessee, Shri Sunil Singh, Manager appeared and submitted that the Tribunal may decide the appeal on the basis of the grounds taken in the memorandum of appeal.

5. On the other hand, the learned AR defended the impugned order and submitted that the appellant is rendering the service of C&F agent and as per the definition of C&F service as provided in the Finance Act, 1994, the appellant very much falls in the said definition and therefore he has been rightly held liable to pay service tax. He further submitted that the Commissioner(Appeals) has rightly held that the appellant can be

treated as C&F Agent by relying upon the decision in the case of Sri Sabarey Enterprises Vs. Commissioner [2006(1) STR 314 (Tri. Chennai)]. He further submitted that as per the agreement between the parties, the appellant who is the selling agent is to sell the goods according the prevailing best market rates, profitably and as per the instruction to be given by the Principal from time to time and further the selling agent shall hold the goods of the principal as the property of the principal and shall not be entitled to offer such goods as security and borrow any money or take loans on pledge goods of principal. He further submitted that as per terms and conditions No.9 and 10, the appellant will get the commission @ Rs.150/- per MT.

6. On careful consideration of the submissions of the learned AR and perusal of the material on record, we find that the appellant falls in the definition of C&F agent service. For better appreciation, we reproduce the statutory definition of C&F Agent which provided in Section 65(25) of the Finance Act, 1994.

> ***"Clearing and Forwarding Agent"*** *means any person who is engaged in providing any service, either directly or indirectly, connected with the clearing and forwarding operations in any manner to any other person and includes a consignment agent;*

Further, we find that taking into consideration the various clauses as contained in the agreement between the parties, the appellant falls in the definition of Clearing & Forwarding Agent and therefore they are liable to pay the service tax. Consequently, we do not find any infirmity in the impugned order which is upheld by dismissing the appeal of the appellant.

(Order was pronounced
in Open Court on **..................**)

P. ANJANI KUMAR
TECHNICAL MEMBER

S.S GARG
JUDICIAL MEMBER

Raja...