IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI

ST/429/2010

(Arising out of Order-in-Appeal. No. 71/2010 (M-ST) dated 29.03.2010 passed by the Commissioner of Central Excise, (Appeals), Chennai).

CCE & ST, Chennai : Appellant

Vs.

M/s. BBC International Express : Respondent

Appearance

Shri K. Veerabhadra Reddy, JC (AR)
for the Appellant

None
for the Respondent.

CORAM :

Hon'ble Ms. Sulekha Beevi, Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing/Decision: **25.05.2018**

FINAL ORDER No. **<u>41713/2018</u>**

Per Bench

Brief facts are that the appellant's were issued SCN alleging non-payment of service tax under "Courier Agency Service'' which are taxable w.e.f. 01.11.1996. After due process of law, the original authority confirmed the demand against which an appeal was preferred before the Commissioner

(Appeals). Vide Order dated 28.02.2007, the Commissioner (Appeals) remanded the matter to the original authority to decide the case after taking into consideration and the Board's Circular dated 31.10.1996. In denovo adjudication, the adjudicating authority confirmed an amount of Rs. 14,28,372/-. In appeal, the Commissioner (Appeals) set aside the demand, interest and penalties. Aggrieved, the department is now before the Tribunal.

2. On behalf of the Revenue, the Ld. AR, Shri K. Veerabhadra Reddy, JC, reiterated the grounds of appeal. He submitted that in the earlier round of litigation, the Commissioner (Appeals) had directed the adjudicating authority to look into the aspect whether the demand includes the services rendered as a co-loader. The adjudicating authority after considering this issue and taking note of the Board's Circular in respect of co-loader has reduced the demand raised in the SCN to Rs. 14,28,372/-. However, the Commissioner (Appeals) has set aside the entire demand stating that the whole demand would be covered by the issue of co-loader. There are three kinds of income received by the assessee. i) income earned from the direct clients, ii) income earned on packages sent by them to foreign countries and iii) income earned on packages sent through other courier agency to foreign countries. The Board's clarification relied on by the assessee is on the service rendered by the co-loader. The said circular does not clarify in respect of courier service

rendered on packages sent outside India. The respondent had not disclosed the income earned from courier sent outside India. The Commissioner (Appeals) has merely accepted the contentions of the respondent without any evidence. The respondent without disclosing the facts to the department has tried to confuse the issue by stating that the courier packages sent outside India has to be treated as 'Export of service'. He prayed that the order passed by the adjudicating authority may be restored.

3. None appeared on behalf of the respondent even though repeated notices were issued.

4. The matter is taken up for disposal after hearing the Ld. AR and perusal of records.

5. On going through the order passed by the adjudicating authority, we find that in page-5 the issue with regard to the co-loader has been considered. After going through the bank realization statement, it is held by the adjudicating authority that no service tax is payable on the income earned as a co-loader. It is also seen that the period of demand in this issue is upto 2005. However, in page-6 he proceeds to hold that the services in respect of courier packages sent outside India cannot be considered as export of services and therefore is liable to levy of service tax. It is not discernable from the orders passed by the authorities below as to what is the amount relating to the issue

of co-loader. When the Board has clarified that the demand in respect of co-loader is not subject to levy of service tax and the adjudicating authority having stated in page-5 that the period of demand on this issue being upto March, 2005, it is necessary to verify as to what is the actual demand in respect of the services relating to co-loader. We therefore deem it fit to remand the matter to the adjudicating authority who shall reconsider the issue after giving a reasonable opportunity of hearing to the appellant.

6. In the result, the impugned order is set aside and the appeal is remanded to the adjudicating authority for reconsideration as discussed above.

(Operative part of the Order pronounced in the open Court)

(MADHU MOHAN DAMODHAR)
MEMBER (TECHNICAL)

(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

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